

COMMITTEE WORKSHOP
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Petroleum Infrastructure) Docket No.
Best Permitting Practices) 04-SIT-01
)
Investigating Causes of Petroleum)
Infrastructure Development)
Constraints)
_____)

COUNCIL CHAMBERS
525 HENRIETTA STREET
MARTINEZ, CALIFORNIA

MONDAY, FEBRUARY 14, 2005

9:36 A.M.

Reported by:
Christopher Loverro
Contract No. 150-04-002

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSIONERS PRESENT

John Geesman, Presiding Member

James Boyd, Associate Member

Jackalyne Pfannenstiel, Commissioner

STAFF and ADVISORS PRESENT

Mike Smith, Advisor

Christopher Tooker

ALSO PRESENT

Steve Hill
Bay Area Air Quality Management District

Katherine Kutsuris
County of Contra Costa

Katherine Hammer
Planning Consultant
City of Benecia

Leslie D. Lacko
San Francisco Bay Conservation and Development
Commission

Jeffrey S. Blanchfield
San Francisco Bay Conservation and Development
Commission

Henry Clark
West Coast Toxics Coalition of Richmond

Greg Karras
Communities for a Better Environment

Edgar Ary
Communities for a Better Environment

Jane Turnbull
League of Women Voters

ALSO PRESENT

Marc D. Joseph, Attorney
Adams, Broadwell, Joseph & Cardozo
California State Pipe Trades Council

Wanna Wright
Communities for a Better Environment

William Rostov
Communities for a Better Environment

Joe Sparano
Western States Petroleum Association

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1 P R O C E E D I N G S

2 9:36 a.m.

3 PRESIDING MEMBER GEESMAN: Good morning.

4 I'd like to welcome you all to a workshop of the
5 California Energy Commission Siting Committee.

6 I'm John Geesman, the Energy Commission's
7 Presiding Member of its Siting Committee.

8 To my left is Commissioner Jim Boyd, the
9 Associate Member of the Siting Committee, and the
10 Presiding Member of the Commission's
11 Transportation Fuels Committee.

12 To my right is Commissioner Jackalyne
13 Pfannenstiel, the Associate Member of the
14 Commission's Transportation Fuels Committee.

15 This is one of the most vexing issues
16 that California's energy system faces, the
17 intersection and overlap of various jurisdictional
18 authorities licensing the infrastructure necessary
19 to develop transportation fuels.

20 The Commission's 2003 Integrated Energy
21 Policy Report recommended streamlining in this
22 area, and suggested a template for consideration
23 as the state's power plant siting process. We
24 have engaged in a series of workshops on that
25 topic around the state.

1 Today we are inquiring as to best
2 practices, followed by various jurisdictions.

3 To put the problem as simplistically as
4 possible, we currently have 36.5 million people in
5 California. That's projected to climb to very
6 near 50 million by the year 2030. The
7 infrastructure for our transportation fuels system
8 is not growing at the same pace that either our
9 transportation demand is, or that our population
10 growth is.

11 Increasingly, that problem's been
12 exacerbated by the fact that we are no longer a
13 net refined product exporter, but are, in fact,
14 for the last several years, a net importer of
15 refined product and blending components.

16 As a consequence the mix of
17 infrastructure needs that our refining sector is
18 likely to have in the future is a bit different
19 than the system that we've had in the past.

20 The Energy Commission has focused its
21 efforts in this regard in the areas of storage and
22 pipelines and marine infrastructure. But inside-
23 the-fenceline refinery improvements are also a
24 topic that has been brought before us.

25 So with no further ado, Commissioner

1 Boyd, do you have anything to say?

2 COMMISSIONER BOYD: Thank you. Just a
3 couple comments. You very eloquently covered the
4 whole waterfront, so to speak, there. I would
5 just re-emphasize one of the points that you made.

6 We're concerned about the entire
7 infrastructure and all aspects thereof. People
8 seem to immediately focus in on refineries and
9 refining because refineries are big structures.
10 But we are concerned about the entire
11 infrastructure, including the pipeline system that
12 you did mention.

13 And I guess a particular concern of mine
14 of late is the continuing difficulties we're
15 having with our pipeline system, which seem to be
16 indicative of an aging infrastructure in that
17 arena, as well, with almost -- quite regular, I
18 didn't want to say weekly, but it seems like that
19 sometimes -- notices of failures of that system
20 and leaks hither and yon. So, that, too is a
21 concern.

22 The petroleum is the fuel that we are
23 dependent on now, and even as we work mightily to
24 diversify the transportation fuel portfolio, if
25 we're going to fuel the economy in the near term

1 and the mid term, even, it's still dependent on
2 petroleum.

3 All some of us can do is drive our
4 hybrids to try to improve the situation. But
5 nonetheless, we do have to worry about the economy
6 because it ultimately pays for all the other
7 changes we need. And petroleum, like it or not,
8 is fueling that economy in the near term.

9 So I look forward to what we can learn
10 today and as we continue our fact-finding on the
11 particular issue. So, thank you.

12 PRESIDING MEMBER GEESMAN: Thank you.

13 COMMISSIONER BOYD: And I should say, to
14 my left is my Advisor Mike Smith, just for the
15 audience's notification.

16 PRESIDING MEMBER GEESMAN: Commissioner
17 Pfannenstiel?

18 COMMISSIONER PFANNENSTIEL: No comment,
19 thank you.

20 PRESIDING MEMBER GEESMAN: Okay. We've
21 published an agenda. I intend to go down that
22 agenda in sequence and ask each of the identified
23 parties to come up in order.

24 We'll also take public comment at the
25 end of our process. There are blue cards on the

1 table in the back of the room. Any members of the
2 public wishing to address us should fill out a
3 blue card and simply bring it up to one of us here
4 at the podium and I'll call on you by name when
5 the public comment period begins.

6 Mr. Tooker.

7 DR. TOOKER: I got a call late Friday
8 from the City of Benecia, who, to their great
9 surprise, lost one of their senior planners on
10 Friday, I guess to some other employment. They
11 may or may not be able to make it this morning. I
12 just thought we'd check to see.

13 Oh, good, we do have a representative.
14 And will you be making a presentation? Excellent,
15 thank you.

16 PRESIDING MEMBER GEESMAN: Okay, why
17 don't we lead off then with the Bay Area Air
18 Quality Management District.

19 MR. HILL: Good morning.

20 PRESIDING MEMBER GEESMAN: Good morning.

21 MR. HILL: Oh, I have to stand up?

22 PRESIDING MEMBER GEESMAN: I think to
23 get picked up by the public address system, that's
24 our only option.

25 MR. HILL: All right, all right, this is

1 going to be a little awkward.

2 PRESIDING MEMBER GEESMAN: In the
3 instruction on the pole of my microphone, I
4 suspect yours is similar, says "speak into mike
5 one inch away."

6 MR. HILL: One inch --

7 PRESIDING MEMBER GEESMAN: None of us
8 are following that, but --

9 MR. HILL: No. No, we don't have any
10 directions.

11 PRESIDING MEMBER GEESMAN: Within two or
12 three inches, I think.

13 MR. HILL: We don't have any
14 instructions out here, we just have to wing it,
15 so.

16 COMMISSIONER BOYD: I'm just afraid of
17 hitting my forehead on this thing if I'm not
18 careful.

19 MR. HILL: Well, hello again.
20 Commissioners and members of the public, I'm sorry
21 you have to look at this view, but that's the way
22 we're structured.

23 (Laughter.)

24 MR. HILL: Good morning, and thank you
25 very much for holding this meeting to discuss

1 issues that are very important to every person in
2 the State of California. It's really helpful to
3 have these discussions.

4 My name is Steve Hill. I am the Manager
5 of the Permit Evaluations Section for the Bay Area
6 Air Quality Management District. The District is
7 responsible for implementing and enforcing state
8 and federal air quality regulations in the nine
9 Bay Area counties.

10 In the group that I supervise are the
11 engineers who write air permits for the five Bay
12 Area refineries, the marine terminals that service
13 them, and the gasoline terminals that distribute
14 the products of the -- that distribute their
15 products.

16 Also in my group are the engineers who
17 write air permits for the power plants in the Bay
18 Area. Over the last ten years I've had the
19 opportunity to work closely with CEC Staff on
20 various issues involving all of these facilities.

21 Let me say at the outset that in my
22 experience the CEC review process and the CEC
23 Staff and Commission are committed to insuring
24 that all of the facilities that bring projects to
25 their view comply with everything that they have

1 to comply with.

2 Compliance, in my opinion, is not really
3 an issue. I'm not concerned about that. For one
4 thing, in the power plant model the Commission
5 works very closely with the Air Districts to
6 insure that everything that the Air Districts
7 understand or need for compliance are incorporated
8 into the CEC's orders. And those orders then are
9 reflected back in our permit. So there's a very
10 close relationship. And I know that some concerns
11 have been expressed in the past. I don't share
12 those concerns. So I want to say that up front.

13 Having said that, I'm going to say right
14 now that like South Coast, I don't believe that a
15 permitting -- CEC consolidated permit modeled on
16 the power plant experience is a good idea for at
17 least the refineries. And I'll return to this
18 later in my comments.

19 Today's topic is best permitting
20 practices, and I'll spend a little bit of time
21 describing the District's role in issuing permits
22 to petroleum infrastructure facilities. And I
23 will explain how my District views CEQA, and how
24 this view translates into CEQA practice.

25 I'll then describe some of the steps

1 that have been taken by the Districts to
2 streamline the process and to minimize the amount
3 of clock tie that a facility spends waiting for
4 the District to take action.

5 Finally, I will offer a few thoughts
6 about how the process might be improved.

7 The District implements two permitting
8 processes. We have the NSR program, which is a
9 preconstruction review program where we review
10 proposed projects to determine whether or not
11 those projects will comply with all state and
12 federal requirements.

13 We also operate a title 5 permit
14 program, which is a slightly different program,
15 under which the District pulls all of the federal
16 air pollution control requirements and state air
17 pollution control requirements into a single
18 document, into a single comprehensive permit.

19 Title 5 permit doesn't impose new
20 substantial requirements. Those are imposed
21 through regulation or through the NSR permitting
22 program. Although the title 5 permit may impose
23 additional monitoring requirements in order to
24 assure compliance.

25 The facility under this program is

1 required to certify compliance annually and to
2 submit monitoring reports semi-annually. And I
3 know that in the southern California hearing you
4 had, you had heard concerns about frequency of
5 reporting. Under the title 5 permits the
6 facilities are required to submit monitoring
7 reports to the agency twice a year.

8 Let me start with the title 5 permit
9 process. All of the District's initial title 5
10 permits have been issued, so we are now into the
11 process of modifications and renewing them.

12 Once a title 5 permit is issued it is
13 renewed every five years. The renewal process is
14 just like the initial issuance process. The
15 entire permit is subject to public comment and
16 review. And a hearing may be held to review the
17 document.

18 The process is very resource intensive,
19 both for the facilities and for the agency. And
20 I'd like to make two points about the title 5
21 process that affect the discussion today about
22 best permitting processes for the refineries in
23 the NSR context.

24 First, because this title 5 process is
25 so resource intensive it consumes resources that

1 might otherwise be spent working on NSR permits,
2 reviewing new projects. And that can tend to slow
3 things down. The facilities have to spend
4 resources and their engineers and their
5 environmental staff have to work on those. And
6 that displaces some of the time that could be
7 spent working on infrastructure projects.

8 So, streamlining efforts that reduce the
9 burden of title 5 permitting can translate
10 directly into increased resources that are
11 available for infrastructure projects.

12 Second, aside from the consumption of
13 resources title 5 permit renewal does not delay
14 any infrastructure improvements. The facility may
15 continue under its existing title 5 permits
16 regardless of delays in the renewal process. So
17 it's important for you to be aware of the fact
18 that the renewal process will not slow any of
19 the -- other than the consumption of resources --
20 will not slow any of these projects down.

21 Title 5 modifications, however, are a
22 different matter. The facility may not operate in
23 violation of its title 5 permit. And the title 5
24 permit may be written in such a way that certain
25 actions, certain kinds of projects or certain

1 kinds of changes at the refinery would be
2 prohibited.

3 Now, those changes, even though they're
4 approved by some other District permitting
5 process, can't be made, can't be implemented until
6 the title 5 permit is changed. And some of the
7 title 5 modification processes can take some time.

8 Note that there's nothing unfortunately
9 the CEC can do to relieve this burden in any way.
10 The way the title 5 programs are set up, they have
11 to be done by the Districts. Unless -- the
12 federal rules require that within a geographical
13 jurisdiction all title 5 permits have to be
14 issuable by one permitting agency. And so there's
15 no way that, for example, the state could take
16 over title 5 permitting for refineries only. That
17 has to stay with the Air Districts. And so
18 there's not much impact -- there's not much relief
19 that the CEC could offer to the agencies on this
20 issue.

21 Turning to NSR permitting, this is the
22 preconstruction review that you're familiar with.
23 I know you've heard the South Coast process
24 described, and ours is very similar.

25 The District reviews a proposal;

1 determines the permit conditions that are
2 necessary in order to insure compliance with the
3 air pollution requirements. Principal components
4 of this review are review of compliance with
5 statutory requirements, best available control
6 technology, offsets and health risk assessment.

7 Very few projects trigger public notice
8 of comment requirements under District rules. We
9 do publish reports of the actions that we take,
10 but we don't take formal efforts to solicit public
11 comment on the vast majority of permits that we
12 issue.

13 And this is the process that any new
14 infrastructure projects will have to go through at
15 the District.

16 The District works with the applicant to
17 define the project until the District has the
18 information that it needs in order to conduct the
19 reviews that I've described, and make the required
20 findings.

21 Once an application is complete the
22 District must decide on the project within 49
23 working days, which is about 75 calendar days.
24 This is in our regulations, in our permitting
25 regulations, that we make these decisions within

1 this timeframe.

2 The District, at this time, has three
3 permits that are outside this window. And they're
4 not -- one of them, I think, is a petroleum
5 refinery. And that's the first best practice that
6 I'd like to mention.

7 The engineering division has a fairly
8 aggressive permit review schedule that I just
9 described. And we have a very active project
10 application management system with reports that go
11 to the air pollution control officer every week.
12 And I can assure you that the air pollution
13 control officer gets back to me if a project stays
14 on that list for a week or two, or that list gets
15 much longer than four or five.

16 Compliance with these permit issuance
17 deadlines is a very high priority. We take it
18 very very seriously.

19 The District has always had assigned to
20 the refineries very experienced engineers. This
21 year the nonrefinery workload for the engineers
22 who are assigned to the refineries has been
23 reduced. And the rest of their plant assignments
24 have been assigned to other engineers.

25 I have one very experienced senior

1 engineer assigned to each of the refineries. And
2 their highest priority is to review refinery
3 permits when they come in.

4 Additionally, all of the engineers who
5 review these projects are grouped into two groups.
6 And the two supervisors who supervise those
7 engineers have a lot of experience. Each of them
8 was a district plant engineer for a refinery
9 earlier in their career. And they are prepared to
10 step in and add additional reviewing resource if a
11 project bogs down or if the workload becomes too
12 great.

13 And I, myself, I'm the manager of that
14 group. And in my career, my 25 years at the
15 District, I have been the refinery plant engineer
16 for three of the five refineries. So we have a
17 lot of experience and expertise that is focused on
18 making sure that the refinery permits are
19 reviewed. Having that expertise and having that
20 focus means that the engineers who review these
21 are very familiar with refinery processes. The
22 questions we ask are -- we try to make them
23 focused. And they are questions that are asked
24 with knowledge of the processes.

25 And that's the second best practice that

1 I wanted to mention. The allocation of
2 substantial and experienced resources to the
3 refinery review process. And constant review of
4 those to make sure that they're adequate to stand
5 up to the workload that we're getting from these
6 facilities.

7 In addition to frequent contact between
8 the District's plant permit engineers and the
9 refinery environmental staff, District management
10 also has frequent contact with refinery managers,
11 individually and as a group, through the WSPA
12 organization. We bring up regulatory issues that
13 we're currently working on and we answer questions
14 that the refineries may have on issues that are of
15 concern to them.

16 And that's the third best practice,
17 ongoing communication between the permit holders
18 and agency staff at all levels. This minimizes
19 surprises on both sides. And it enhances
20 compliance. We can explain to the facilities what
21 we expect of them. They can ask questions if
22 they're not certain. And we can minimize
23 noncompliance.

24 We also encourage permit holders to keep
25 us apprised of their long- and short-range plans.

1 We encourage preapplication meetings so that we
2 can go at an early stage in their project planning
3 process, so that we can go over air quality
4 requirements; we can point out information needs
5 that we are going to have so that when they come
6 in they can shorten iteration time as we ask them
7 questions. Because they can start their
8 information gathering earlier if they know what
9 the questions that we're going to have on their
10 project are.

11 And I might point out that this
12 information gathering process is frequently longer
13 than our evaluation process. A lot of -- most of
14 the time in our experience with permits is that
15 most of the clock time is taken up once the agency
16 has screened a project to determine what
17 information it needs to make a decision, waiting
18 for that information coming.

19 And that's the fourth best practice, and
20 that's entirely in the hands of the applicants, to
21 adequately prepare their application, their
22 submittal to us to get us the information we need.
23 And to have preapplication meetings with the
24 agency as early as possible in the planning
25 process.

1 Let me turn now to CEQA, and the
2 District's approach to it. And this is where we
3 differ from the South Coast District. We avoid
4 it. We run away from CEQA as much as we can. We
5 do not want to be a lead agency. And there's a
6 couple of reasons for that.

7 Well, when we're not the lead agency the
8 process that we follow is we complete our permit
9 evaluation up to the point of issuance, and then
10 we hang at that point until the CEQA documentation
11 is complete. It's a parallel review. We do not
12 wait for the CEQA process to complete before we
13 begin our review.

14 Usually we issue our permit within a
15 week after the CEQA process is complete. We have
16 to take the time to review the CEQA document to
17 make sure that there's nothing in it that would
18 change the decision that we're making. And then
19 we proceed with the appropriate approvals. And,
20 again, usually our action follows the EIR within a
21 week.

22 And during the EIR process, during the
23 CEQA process, we review draft documents for
24 refinery projects, and we do provide comment.

25 Now, why do we avoid acting as the lead

1 agency? As I said, there are a couple of reasons
2 for that. First, we are a single-purpose agency,
3 without authority or expertise in land use
4 decisions. We're just air pollution folks.

5 And secondly, our entire decisionmaking
6 process is based on compliance. We try to be
7 objective and gauge whether a project is going to
8 comply with the regulations. Our issuance of an
9 authority to construct means that based on our
10 evaluation the project will comply with all air
11 pollution requirements, and that it's a safe
12 project from an air pollution standpoint. That
13 the air emissions will not have a significant
14 effect on human health.

15 PRESIDING MEMBER GEESMAN: Don't those
16 same considerations enter into the mix in the
17 South Coast?

18 MR. HILL: Yes, they do, they enter into
19 the mix. But our analysis stops there. We feel
20 that we are much more credible if our agency's
21 mission is to objectively define the impacts,
22 determine compliance, and not take the next step,
23 which is a political step, to determine whether or
24 not the project is a good one, or a desirable one,
25 or one that is in the interests of the community.

1 We feel that our analysis is stronger
2 and more defensible and our mission is satisfied
3 if we determine that the project complies and is
4 safe.

5 PRESIDING MEMBER GEESMAN: Let me ask
6 you, do you think that the CEQA document is
7 stronger and more thorough as a result of that
8 delegation on your part?

9 MR. HILL: I believe that it is.
10 Assuming that the lead agency is building on the
11 analysis that we've provided. Because, as I said,
12 we perform the analysis and we complete the
13 analysis long before, if there's an EIR being
14 prepared, long before the EIR is prepared.

15 PRESIDING MEMBER GEESMAN: Then I
16 presume you were always satisfied in the end with
17 the quality of CEQA document that's prepared?

18 MR. HILL: We are satisfied with the
19 piece of it that we are responsible -- that we're
20 not responsible for, but that is relevant to us.
21 That the air pollution impacts have been
22 adequately addressed. Or if they're not, it's not
23 because we haven't commented on it.

24 PRESIDING MEMBER GEESMAN: You know,
25 Steve, it sounds to me like that's a delegation to

1 the weakest link in the chain, and you simply
2 choose to turn your back on the consequences of
3 that.

4 MR. HILL: I respectfully disagree with
5 you. And the reason I disagree is because while
6 we may not -- while the local agency may not have
7 the strongest air quality expertise, we won't
8 issue a permit if it's not going to comply. So we
9 feel that the air pollution piece will be
10 addressed one way or another, whether it's
11 addressed in the CEQA document or not.

12 Where our chain is weak is with the
13 local land use issues. We just do not have the
14 expertise, nor do we have the responsibility to --
15 or the responsiveness to the local community, the
16 people who are actually impacted by this, to be
17 able to make the political decision of whether or
18 not this project, in this place, is the right
19 thing at the right time.

20 PRESIDING MEMBER GEESMAN: That sounds
21 like go-along to get-along to me.

22 MR. HILL: Again, I respectfully
23 disagree. I think that the people who are most
24 impacted, the people who are answerable to the
25 people who are most impacted are the ones who

1 ought to be considering these issues as to whether
2 or not the project is a desirable one for this
3 community. Whether the community is getting
4 enough back to justify the reduction or the
5 concern about reductions in quality of life in
6 that community.

7 I don't think that my agency, with a
8 larger spatial jurisdiction, is answerable enough
9 to the people who are actually going to have to
10 live with the project, to be able to make the
11 decision for them on their behalf, whether it's a
12 good project.

13 DR. TOOKER: Steve, what level of
14 assistance or guidance or advice do you provide to
15 the local jurisdictions in terms of the proper way
16 to do an air quality analysis as part of the CEQA
17 process?

18 MR. HILL: We have guidance documents as
19 to what constitutes a significant impact. This is
20 mostly targeted towards the indirect sources like
21 facilities that draw traffic.

22 Our engineering evaluation is available
23 to the facilities -- and this is an area where,
24 you know, I was talking about things that could
25 improve -- we could improve the communication that

1 we have with the facilities -- or with the lead
2 agencies. We are more active with refinery
3 projects than we are with other industrial
4 projects.

5 But we encourage the agencies to remain
6 in contact with us. They consult with us. The
7 City of Benecia has consulted with us quite
8 extensively on the recent modifications to the
9 Valero Refinery.

10 Our engineering evaluations are made
11 available to them so that they can incorporate
12 whatever elements they feel they can. We comment
13 if we think that there are air quality impact
14 issues that are not adequately addressed, or that
15 are overlooked in these CEQA documents. Certainly
16 the cooperation could be enhanced.

17 DR. TOOKER: Thank you.

18 MR. HILL: Any more back-and-forth on
19 this?

20 PRESIDING MEMBER GEESMAN: No, and I
21 didn't mean to interrupt you, I'm sorry.

22 MR. HILL: No, no, that's quite all
23 right. I assumed that I would be getting
24 questions on this.

25 Well, actually I've said some of the

1 things I was going to say.

2 PRESIDING MEMBER GEESMAN: I've got a
3 question on court challenges.

4 MR. HILL: Yes.

5 PRESIDING MEMBER GEESMAN: How many of
6 your decisions have been successfully challenged
7 in court?

8 MR. HILL: As lead agency or as --

9 PRESIDING MEMBER GEESMAN: Well, we'll
10 start with as lead agency, but I also want to ask
11 you about NSR, title 5.

12 MR. HILL: I'm aware of two times when
13 we have either been successfully challenged in
14 court or settled with the party because their
15 challenge was actually correct.

16 And in both of those cases it was
17 because we had prepared a negative dec, or had --
18 we had prepared a negative dec instead of going to
19 a more full document.

20 And as you're aware, the burden of proof
21 to successfully challenge a negative dec is
22 probably the lowest legal burden of proof. It's
23 certainly the lowest I've ever heard of. It's
24 fair argument.

25 And I'm not aware of having a document

1 that's gone to the EIR stage, which would be sort
2 of -- which would be the level that your agency
3 would be operating at in terms of its equivalent.
4 I'm not aware of any such document ever being
5 successfully challenged.

6 PRESIDING MEMBER GEESMAN: Where you've
7 been the lead agency?

8 MR. HILL: Where we've been the lead
9 agency. Well, there was one about 25 years ago.

10 Successful challenges of other
11 environmental documents that we've, you know, of
12 projects, yes, those happen. And usually they
13 happen because an agency hasn't done an EIR. And
14 the fair argument standard is incredibly low. So,
15 you know, those are the things that we have to
16 wrestle with.

17 If I may I'd like to offer some thoughts
18 about how the CEC might help improve the
19 permitting process. I can't speak for any of the
20 other agencies, but I have found these workshops
21 that you're holding now to very very helpful.

22 I know that the South Coast District,
23 like the Bay Area, is committed to eliminating
24 unnecessary and unproductive effort in its permit
25 program. I know you've heard the South Coast say

1 this. We, each of our agencies, frequently look
2 at our processes and talk to our stakeholders to
3 try to find if there are ways that we could --
4 things that we could eliminate that would make
5 things go faster.

6 These workshops have provided us an
7 opportunity to examine the practices of other
8 agencies, not just turning inward, but also
9 looking outward, and seeing what other folks are
10 doing. And looking for ideas or stimulus for our
11 own ideas for improvement. And so that's been
12 useful and I'm really really glad that the CEC has
13 done this.

14 Commissioner Geesman, I've heard you say
15 at several of these hearings that if a local
16 agency is the lead agency how can the concerns of
17 other people in the state, the farmer in Fresno,
18 be adequately represented. And part of my
19 response to that is that high gasoline prices --
20 I've said this before when you asked me this
21 question before -- high gasoline prices are shared
22 by everyone who lives in the state; everyone has
23 to pay them.

24 And part of the answer is also that the
25 project proponent certainly makes these points.

1 To the extent that the CEC sees itself as a voice
2 for that farmer, and here's my suggestion, the CEC
3 could certainly participate much more strongly in
4 the local CEQA process. The CEC can represent the
5 state's planning, you know, power energy planning
6 interests at the CEQA hearings, and in commenting
7 on CEQA documents.

8 I can only speak for my agency, but I
9 know that in those cases where we have been lead
10 agency, we would greatly appreciate the CEC's
11 analysis of the impact the project has on
12 petroleum infrastructure and on the energy supply
13 in the state. And would gladly incorporate much
14 of that analysis into the needs sections of the
15 CEQA document. We would really appreciate that
16 support.

17 If the CEC wishes to continue to pursue
18 this idea of becoming a lead agency, a
19 consolidating agency or a lead agency, for these
20 projects, I would recommend a different approach
21 than the power plant model.

22 I would suggest that you get yourselves
23 some discretionary authority on these permits.
24 Maybe another layer of permitting, but get
25 yourself some discretionary authority and arm

1 wrestle for the privilege of being the lead
2 agency, operating under the lead agency
3 requirements of CEQA and the court challenges that
4 are possible under that.

5 I know that you wouldn't go the negative
6 dec route unless it was appropriate, so you
7 wouldn't be subjecting yourselves to that low
8 standard of burden of proof. But the judicial --
9 there would be a realistic opportunity for
10 judicial review. The standard for judicial review
11 would not be the highly deferential one that you
12 get right now on whether the Supreme Court reviews
13 the energy projects.

14 But I'd also suggest that the stakes are
15 a little bit lower here than they are in the case
16 of a power plant. If a power plant project
17 doesn't go through you run the risk of blackouts
18 and brownouts and other severe safety-related
19 problems.

20 If one of these infrastructure projects
21 doesn't go through, we face price spikes.

22 PRESIDING MEMBER GEESMAN: No, I think
23 it's a little more severe than that. I actually
24 think, and our 2003 report does lay out, that our
25 sluggishness at making these infrastructure

1 improvements not only creates price volatility,
2 which the public doesn't have much tolerance for,
3 and which the political sector has even less
4 tolerance for, but it also creates concerns about
5 the availability of supplies.

6 My principal concern is that we're going
7 to get into one or a series of these volatility
8 events and ultimately the response of government
9 will be what the American Petroleum Institute
10 suggests, and that is that we eliminate
11 California's special ability to set the air
12 quality standards for the fuels that we use. That
13 we all of a sudden go to a national standard.

14 I think that would be an environmental
15 tragedy. And I don't, frankly, see the benefit of
16 the political expediency that our current system
17 allows, where your agency defers to local
18 governments because you don't feel that you have
19 the political perspective to make the judgments
20 necessary on these permits.

21 I think that what you're doing, over
22 time, is endangering our ability as a state to
23 continue to regulate the environmental effects of
24 the fuels that we use. So I think there's a lot
25 at stake.

1 MR. HILL: I think so, but my assessment
2 is that that possibility is a little bit more
3 remote. Perhaps my assessment is different than
4 yours in terms of how likely that is.

5 I think that the arguments that -- I
6 think that there is very little support for the
7 idea that our sluggishness is due to environmental
8 impacts. I think that the price spikes certainly
9 haven't been tied successfully to environmental
10 issues or the sluggishness of infrastructure
11 development.

12 I just don't think that that's there.
13 Whether or not this is enough grist for the mill
14 to drive a decision that is actually motivated by
15 other reasons, I don't know. I can't assess that.

16 COMMISSIONER BOYD: Well, I think you've
17 stepped on a real hot button issue with that last
18 statement.

19 I tend to agree with Commissioner
20 Geesman's assessment of the magnitude of the
21 problem. I mean we are the nation-state of
22 California; we are the world's fifth or sixth, in
23 any given week, economy. And it's a long way
24 between here and Washington. And there are a lot
25 of perceptions that are relayed into false

1 promises or ideas and speculation.

2 And so I do think it's a problem. But
3 if you're going to remain the world's fifth
4 largest economy and continue to grow, which is a
5 policy decision that has been made for decades, if
6 not centuries, then we have to be reasonably
7 responsive. And all this talk about restructuring
8 government and restructuring electricity process,
9 is relevant to taking a look at the other ways we
10 do things in this state.

11 You and I have known each other a long
12 long time. You're aware of my 20-plus years in
13 air quality business. I wouldn't do anything to
14 undermine environmental protection. So I'd agree
15 with you, it's not proper to say that any of the
16 alleged sluggishness is tied to some kind of
17 California fetish for environmental impacts. It's
18 just tied to processes.

19 And what we are trying to look at here
20 are ways to streamline processes. And as
21 Commissioner Geesman said, try to find a template,
22 or try to find an approach using, as a starting
23 point, a template that may or may not fit
24 properly.

25 But I have personal experience with the

1 environmental issue of California's cleaner
2 burning gasoline. And I have etched in my memory
3 the fact that there was a huge difference between
4 approaches taken in the Bay Area and the South
5 Coast. The South Coast was lead agency, went out
6 and sold to the local communities and everyone
7 else the net benefit of cleaner burning gasoline
8 to the citizens of California.

9 And here in the Bay Area the ARB Staff
10 had to go meet with each and every local
11 government, district, and educate them -- some of
12 the people who are sitting in the audience had to
13 do that -- educate them on what this all meant.
14 And what the magnitude of it was.

15 And we're a little disappointed that the
16 Bay Area wasn't, you know, didn't step up to the
17 plate and carry that issue.

18 So I think the points being made here
19 are that, you know, we do need to look at things.
20 We cannot afford always to just look at them in
21 the isolation of our smaller geographic area. Not
22 to say in any way that we want to do anything to
23 affect the health of the people, but there may be
24 better ways to look at processes.

25 And I recognize the Bay Area District is

1 the oldest district in the state, the biggest
2 district in terms of number of communities or
3 counties that you affect, which, you know, I'm
4 kind of curious if this process is one that was
5 worked out through some kind of mutual
6 understanding, you know, way back when.
7 Memorandums of understanding or just mutual
8 understandings that you drew a line in the sand
9 saying this is our responsibility and from that
10 point forward it's someone else's responsibility.

11 And if that, indeed, is true, has it
12 been looked at in recent history? And we're just
13 turning the rock over to take a look at whether or
14 not some changes might be appropriate.

15 MR. HILL: I think you're correct in a
16 lot of ways. I think that -- I certainly think
17 that your analysis of history is -- I certainly
18 agree with that.

19 The needs, the impact that the -- the
20 regional impact of cleaner gasoline has been
21 dramatic and has been very important for all
22 Californians. All I can say about those
23 historical decisions about how much of a
24 cheerleader the District should have been for
25 those programs with the local land use planners,

1 first of all, I didn't make those decisions. So
2 I'm not defending them.

3 But the impacts, the regional impacts
4 were much more important to South Coast, as well.
5 And therefore, they upped a bigger stake. I don't
6 know what was balanced by the decisionmakers in
7 trying to remain aloof from that in the Bay Area.
8 And, so, I really can't respond in detail to what
9 you just said.

10 But it does underscore something that I
11 mentioned earlier, and something that you all
12 have, something that's driving this whole process
13 for you, which is that the state's interests in
14 developing a solid planned infrastructure for all
15 forms of energy in this state need to be more
16 adequately carried to the local -- or to whoever
17 is making the CEQA decisions.

18 Whether that means taking over those
19 CEQA decisions, or improving the voice and
20 improving the education of those who are
21 considering other issues, I've expressed my
22 opinion. I think that we ought to be trying the
23 improvement of education of the folks who are also
24 considering local impacts, rather than taking away
25 from them the decisions of things that are going

1 to dramatically affect, or could dramatically
2 affect the people who live near these facilities.

3 PRESIDING MEMBER GEESMAN: You see the
4 power plant template as a take-away?

5 MR. HILL: No. I see the power plant
6 differently because of the -- well, quite frankly,
7 the environmental stakes are lower for a power
8 plant. The local impacts, I know there are people
9 who disagree with me on this, but the local
10 impacts of a modern power plant are small compared
11 to the local impacts of a modern refinery.

12 The --

13 PRESIDING MEMBER GEESMAN: We're not
14 contemplating someone seeking a permit for a new
15 refinery.

16 MR. HILL: No, I understand that. But
17 the decisions that are made -- the refineries
18 currently have impacts on the community. The
19 communities, most of the -- many members of the
20 community are not entirely pleased with the
21 performance of the facilities and the impacts that
22 they have on them.

23 And so it's not unreasonable for them to
24 seek some additional benefits, some improvement in
25 their quality of life to offset the fact that

1 they're in an area that's impacted. To offset the
2 benefit -- not to offset, but to get a greater
3 share of the benefits that the state is going to
4 reap from having cleaner gasoline.

5 PRESIDING MEMBER GEESMAN: They may find
6 a state forum with teeth substantially better in
7 delivering those benefits than the status quo.

8 MR. HILL: That might be -- my
9 experience with environmental justice is that one
10 of the important aspects to -- one of the things
11 that has grown up over the last 10 or 15 years is
12 that the communities are interested not just in
13 benefits, but also in the process, in having
14 control, having voice, a strong voice that is
15 heard in the process. And having decisionmakers
16 that are accountable to them at the ballot box is
17 an important part of that. Having access to the
18 staff, having a lot of access to the staff is an
19 important part of that.

20 And so there is -- I think I started out
21 saying, and it bears repeating, that in my opinion
22 this agency, the CEC's decisionmaking process
23 comes up with good solutions; they're compliant;
24 they meet all of the requirements. And frequently
25 goes beyond and takes into account mitigations

1 that the regulations do not require.

2 But there is a remoteness that is -- a
3 remoteness of the state agency that undermines
4 public participation and the public's perception
5 that it is participating.

6 DR. TOOKER: Steve, when I talked to you
7 last week I'd asked you to comment on any policies
8 or programs the District has with respect to
9 environmental justice. Could you speak to that?

10 MR. HILL: Yes, I will. The District
11 has been working with community groups in
12 developing its environmental justice processes,
13 procedures and program. We have developed what we
14 call a CARE program. It's similar to some of the
15 things the South Coast did with its
16 (indiscernible) program.

17 What we are planning to do is to do
18 comprehensive cumulative impacts for some of the
19 most impacted communities in the Bay Area, so that
20 we can assess what all the combined impacts are of
21 all of the industrial and commercial and other
22 sources in the community.

23 And we plan to use these studies to
24 further develop policies and procedures for
25 permitting and for rule development, and for

1 addressing the impacts in those communities.

2 Certainly one of the communities that
3 we're looking at is the Richmond community, which
4 is near the Chevron Refinery. That's a community
5 that has a lot of industrial sources around it and
6 in it. So we will be looking at that.

7 Most of our efforts have been in trying
8 to work with the communities to identify the
9 issues that are of concern to them, and to address
10 those issues; to improve our response to
11 complaints; to improve notification so the
12 community members know about projects that are
13 going into the communities about which they might
14 be concerned. And to improve their access to
15 information.

16 COMMISSIONER BOYD: You know, I don't
17 disagree with anything you just said about the
18 need for local community involvement and education
19 and what-have-you; and I think in this day and age
20 it's more important than it was in the days when a
21 lot of the kinds of facilities we're talking about
22 were out in the middle of nowhere. Because we
23 didn't have 36.5 million people.

24 But one of my observations from multiple
25 decades in government, albeit you might say remote

1 at the state level, is my concern for the public
2 health and environmental justice issues that we've
3 all been talking about for quite some time now.
4 And my wondering aloud, or wondering to myself,
5 and now aloud, about local land use
6 decisionmaking.

7 And I'm just wondering if we'd be having
8 to concern our collective selves quite so much
9 with public health issues which do have much more
10 of an environmental justice component to them
11 nowadays because of the pricing of land and the
12 pricing of homes and what-have-you. If we'd be
13 worrying as much about that today if local land
14 use decisions made by local people had not put so
15 many people in harm's way. Had not put people
16 right up to the fenceline of facilities that
17 perhaps shouldn't have occurred.

18 And I'm not saying some decisionmaking
19 from Sacramento might have done better. But I'm
20 just saying we're wondering about, you know, an
21 assessment of the way we do things in the nation-
22 state of California with 36.5 million people, and
23 the ever accelerating pace of everything in trying
24 to keep people employed, and keeping the quality
25 of life and an economy that serves the golden

1 state, so to speak.

2 So, there are questions, I think, that
3 can legitimately be asked about the way we used to
4 do things versus the way, maybe, we should be
5 doing things in the future.

6 So, this is not -- you're the person
7 carrying all the questions now because you're
8 standing up there, but it's not an assault on any
9 decisions that you've made. It's maybe a question
10 about the structure of the decisionmaking and
11 administrative processes that we've utilized in
12 the past.

13 And there are legitimate questions in my
14 mind, anyway, about some local decisions and what
15 drives those decisions. Now, if I were king and
16 could redesign the financing of government at all
17 levels in California, maybe -- a long time ago,
18 maybe we wouldn't be facing these kinds of
19 development problems to drive local revenues and
20 what-have-you. But that's just a personal
21 opinion.

22 But we have to deal with what we've got
23 now, and it is a problem. And I do think it
24 impinges upon our economy, our inability to move
25 quickly. If you look at down the path of permit

1 requirements we have in this state, it's very
2 formidable.

3 And a lot of the individual reasons, if
4 not all of them, are very good reasons. Just
5 wonder if there isn't some modification to the
6 process because some people look at that, all
7 those hurdles, and say, forget it, I'm not even
8 going to try. And then we get ourselves in the
9 position of impacting our economy, which is tough
10 on the health of people who need jobs. That's
11 what we're wrestling with.

12 MR. HILL: I do not disagree with
13 anything you've just said. Absolutely not.

14 PRESIDING MEMBER GEESMAN: Steve, thanks
15 for your testimony and thanks for your patience
16 and putting up with us for so long.

17 COMMISSIONER BOYD: Did we let you
18 finish?

19 MR. HILL: No, no, I appreciate it,
20 thank you. Thank you for this opportunity; and
21 thank you for your interest; and thank you for
22 your attention.

23 PRESIDING MEMBER GEESMAN: The next
24 comments come from the Contra Costa County.

25 DR. TOOKER: Maybe they're not here yet.

1 They were the ones that committed first, but --

2 PRESIDING MEMBER GEESMAN: Okay. Why
3 don't we go then to the City of Benecia.

4 MS. HAMMER: Thank you. I didn't expect
5 to be holding up the end of local government at
6 the last minute here, but --

7 (Laughter.)

8 MS. HAMMER: -- I'll do what I can. My
9 name is Kitty Hammer and I'm representing the City
10 of Benecia.

11 Not surprisingly the City is somewhat
12 reluctant to give up its permitting authority over
13 refineries. And what I'd like to do today is to
14 share with you some of the protocols and
15 ordinances that the City has developed, and that I
16 think have allowed it to work well with the
17 refinery to process permits in a timely manner,
18 and to avoid interfering any more than necessary
19 with the refinery's day-to-day operations and
20 their attempts to improve their facility.

21 The first part of that that I'd like to
22 talk about is building and grading permits. The
23 refinery does do quite a lot of building and
24 grading in the normal course of business out
25 there. And through a cooperative relationship

1 there have been annual building and grading
2 permits developed, a protocol for these permits,
3 that simply put, it provides for the refinery to
4 be able to go ahead and do limited amounts of
5 building and grading during the year and to report
6 to the City and pay their fees at the end of the
7 year.

8 There are thresholds set in these annual
9 permits. And any building and grading that falls
10 below that threshold, the refinery can simply go
11 ahead and carry out. They hire their own
12 specialized inspectors and take care of it that
13 way. And at the end of the year they report to
14 the city; they pay their fees; and the City has a
15 contract inspector that goes out and does what
16 amounts to a spot check. They go over the list of
17 projects that have been completed; select a few
18 for a thorough review just to make sure that
19 things are going along well.

20 So that's the way that most of the
21 projects at the refinery get handled. It really
22 avoids interfering with the day-to-day business of
23 the refinery. And if a project, building or
24 grading project, does not fall within these
25 threshold limits, then, of course, it does go

1 through the normal plan check process, which also
2 involves a review for any type of planning issues
3 that may be raised, whether there's a need for a
4 CEQA document or a use permit.

5 This --

6 DR. TOOKER: I have a question.

7 MS. HAMMER: Yes.

8 DR. TOOKER: You had talked about a
9 threshold, I thought, as pertaining to grading
10 permits. But are you implying now that you also
11 have a threshold for requiring discretionary
12 permits such as use permits or rezones?

13 MS. HAMMER: Yes, I'm just coming to
14 that.

15 DR. TOOKER: Okay, thank you.

16 MS. HAMMER: Interestingly I think
17 Commissioner Boyd was referring to the CARB's
18 clean fuels requirements that went into effect
19 about ten years ago. And that prompted the City
20 to adopt an ordinance requiring a use permit for
21 refineries because the City thought that this was
22 going to be a big enough project that it didn't
23 want it to be happening without any City input or
24 control.

25 So the City did adopt that use permit

1 requirement, but it also has threshold levels
2 which are designed to capture the important
3 projects that could raise real issues that are of
4 concern to the City and allow other projects to go
5 forward with limited interference.

6 Since the refinery was in existence
7 before the use permit requirement it's now
8 regulated as a nonconforming use by virtue of the
9 fact that it didn't get a use permit when it first
10 developed. So it comes under the nonconforming
11 use section of the zoning ordinance.

12 And I'd like to quote from the zoning
13 ordinance here: It requires a use permit for
14 alteration or expansion of this preexisting use.
15 And expansion is interpreted as an enlargement or
16 extension of the use so that it occupies any part
17 of the structure or another structure or site
18 which it did not occupy on the effective date of
19 the use permit requirement."

20 So basically if the refinery expands
21 outside of the existing boundaries, outside of its
22 existing developed boundaries, it would require a
23 use permit for that expansion, not for the
24 refinery as a whole, but for that expansion.

25 The definition of alteration is number

1 one, a change which equals or exceeds \$20 million.
2 And number two, a change which substantially
3 alters the character or operation of the existing
4 use. The \$20 million is adjusted each year by the
5 amount of the CPI, and the current figure is
6 approximately \$28 million.

7 So, as you can see, there are a
8 substantial number of projects that the refinery
9 could carry out that do not require use permits.
10 And, in fact, the most recent one that comes to
11 mind is the changes that were necessary to phase
12 out the use of MTBE. Those were exempt from the
13 City's use permit requirement and the Air Quality
14 Management District became the lead agency for
15 that project.

16 On the other hand, the clean fuels
17 project was captured by that. And we did go
18 through the EIR process. And the City was able to
19 insure that its concerns were met as part of that
20 process.

21 When I spoke to the Committee in June I
22 alluded to the Valero improvement project, which
23 had recently come before the City for a use
24 permit. And I'd like to cite that again as an
25 example of using this process to the benefit of

1 both the City and the refinery.

2 This was a voluntary effort on the part
3 of the refinery to bundle all of the projects that
4 Valero thought they might want to undertake to
5 improve their newly purchased refinery. They put
6 them all together into one application; came to
7 the City and applied for a use permit. And the
8 City, naturally, prepared the EIR and considered
9 granting a use permit.

10 This worked very well for the City
11 because it bundled together some projects which
12 would not have required use permits on their own,
13 with individual projects that fell within the VIP
14 that would have exceeded that \$20 million
15 threshold. And allowed the City to look at all of
16 them as a group, and to consider the cumulative
17 impacts in a much more comprehensive way.

18 It also served the refinery very well,
19 because once they had their permit they had
20 certainty about what they could do. And since
21 they had projected and included in their
22 application everything they thought they might
23 want to do until the end of 2009, it gave them
24 certainty as to what they would be able to do.
25 And they don't have to come back to the City for a

1 lot of additional permits.

2 The use permit contains requirements for
3 annual reporting and for compliance monitoring,
4 which keep both the City and the refinery on track
5 on this project as it moves along. And so far,
6 although the refinery hasn't undertaken --
7 projects yet, it seems to be working out quite
8 well.

9 Before I conclude I'd like to also add a
10 couple of words about the Air Quality Management
11 District. In the course of working on these
12 various projects, and in particular VIP, the City
13 has developed a very good and close working
14 relationship with the Air Quality Management
15 District. And this has served to allow, I think,
16 for a much better EIR than we could have had
17 without that working relationship. And it also
18 facilitated the Air District's permitting process
19 because the EIR met their needs. They knew what
20 they were going to be getting in advance, and they
21 were able to act with reasonable speed to issue
22 their permit.

23 Recently the District has begun to
24 consider a rule change which would conform their
25 permit time limits with the permit time limits in

1 a use permit, such as the VIP. As you may or may
2 not know, the District has a two-year time limit
3 on their permits, which can be extended for
4 another two years. But that is not consistent
5 with the seven-year timeline for the VIP. So if
6 they adopt this rule change those permits will be
7 coordinated and the refinery will really be able
8 to move forward without a lot of extra permitting
9 problems.

10 That really concludes what I wanted to
11 say. If there are any questions I would be happy
12 to entertain them.

13 PRESIDING MEMBER GEESMAN: I want to
14 thank you very much for coming.

15 DR. TOOKER: Commissioner Geesman, I had
16 asked also the local governments to talk about any
17 environmental justice policies and programs. Do
18 you have anything to say along those lines?

19 MS. HAMMER: The City does not have a
20 policy or program, as such. But I would like to
21 touch on this just a little bit.

22 The refinery actually owns a great deal
23 more acreage than has been developed for the
24 refinery. They bought that specifically as a
25 buffer, which was a very wise move. And the land

1 is undeveloped; it will probably remain
2 undeveloped for some time.

3 The City has zoned it for light
4 industrial. And also has zoned and general
5 planned a strip of land between that light
6 industrial land and the surrounding residential
7 uses for open space.

8 So there's approximately a quarter-mile
9 or more between the refinery and any residential
10 uses. And this has really served to limit the
11 concerns that the citizens have about impacts of
12 the refinery on their residential use.

13 PRESIDING MEMBER GEESMAN: Have you had
14 any of your use permits or building and grading
15 permits or CEQA documents successfully challenged
16 in court?

17 MS. HAMMER: No, we have not. At least
18 not to my knowledge. The use permit requirement
19 was only enacted in 1993. And several use permits
20 have been appealed from the planning commission to
21 the City Council, but none have gone to court.

22 PRESIDING MEMBER GEESMAN: Thank you
23 very much. And I do apologize for making you the
24 only representative of local government. Mr.
25 Tooker, I believe that you had tried to get ahold

1 of representatives from both the City of Richmond
2 and the City of Martinez?

3 DR. TOOKER: I did, and both of those
4 cities said that they didn't have the resources or
5 the time to participate. And then the City of
6 Contra Costa, of course, said they would. I don't
7 know what's happened.

8 PRESIDING MEMBER GEESMAN: County of
9 Contra Costa.

10 DR. TOOKER: County of Contra Costa.
11 Thank you.

12 PRESIDING MEMBER GEESMAN: Okay. Let's
13 go to Bay Conservation and Development Commission.

14 MS. LACKO: Good morning, Commissioners.
15 I'm Leslie Lacko with the San Francisco Bay
16 Conservation and Development Commission, also
17 known as BCDC. Also with me today is Jeff
18 Blanchfield; he's our Chief of Planning.

19 Thank you for inviting us to make this
20 presentation today and to clarify BCDC's role in
21 permitting and regulating and planning for the
22 petroleum industry.

23 First of all I'll give you an overview
24 of just what BCDC is and does, as we're a rather
25 small regional state agency with regional

1 jurisdiction And then I'll take you through the
2 handout that I passed out. And for members of the
3 public, there are handouts on that table over
4 there if you wish to have one.

5 In 1965 in response to broad public
6 concerns over the state of the Bay the California
7 Legislature passed the McAteer-Petris Act which
8 created BCDC. The Act required that BCDC prepare
9 a comprehensive and enforceable plan for the
10 conservation of San Francisco Bay and the
11 development of its shoreline.

12 In 1969 BCDC submitted the completed Bay
13 plan to the Governor and the Legislature. And
14 then the McAteer-Petris Act was amended to give
15 the Bay plan the force of law.

16 So under that law BCDC is directed t
17 regulate through a permit process all filling and
18 dredging in San Francisco Bay and all new
19 development along the shoreline. We regulate
20 development along the shoreline to insure that
21 maximum feasible public access is provided to the
22 Bay.

23 We also have the power to protect the
24 Suisun Marsh by administering the Suisun Marsh
25 Preservation Act. And to designate as priority

1 use areas portions of the shoreline that are
2 suitable for high priority, water-oriented uses,
3 such as water-related industries, water-oriented
4 recreation, airports, wildlife areas, ports.

5 To update Commission plans and policies
6 based upon best available scientific and current
7 information. And to administer the Federal
8 Coastal Zone Management Act within the San
9 Francisco Bay to insure that federal activities
10 reflect Commission policies. And to participate
11 in California's Oil Spill Prevention and Response
12 Planning Program.

13 Marine facilities within the San
14 Francisco Bay and its shoreline include 26 marine
15 terminals accommodating approximately 3300 oil
16 tankers per year. Additionally, there are
17 approximately 650 tanker arrivals and over 3000
18 deep-draft vessels arrive in the Bay every year.

19 BCDC plays an important role in four
20 primary capacities related to the petroleum
21 industry activities. One, by designating priority
22 use areas for water-related industry. Two, by
23 planning for and processing permits for dredging
24 new marine terminals. Three, by issuing permits
25 for construction, operation or repair of marine

1 terminals and pipelines. And four, by
2 participating in the Oil Spill Prevention and
3 Response Program and Harbor Safety Committee.

4 BCDC clearly recognizes the importance
5 of the petroleum industry in San Francisco Bay.
6 And we have successfully worked with the industry
7 and other agencies to plan for future development
8 and expedite permit processing.

9 Regarding our priority use areas in the
10 San Francisco Bay Plan, the plan designates
11 significant acreage along the shoreline for high
12 priority water-oriented uses. Those uses could
13 support oil refineries and terminals.

14 The priority use designations function
15 to minimize pressures to fill the Bay, and to
16 insure that the limited amount of shoreline area
17 suitable for priority uses is reserved for those
18 uses.

19 The Bay plan policies on water-related
20 industry require that, quote, "sites designated
21 for water-related industry in the Bay plan should
22 be reserved for those areas or those uses that
23 require navigable deep water for receiving
24 materials or shipping products by water in order
25 to gain a significant transportation cost

1 advantage.

2 Pursuant to those policies BCDC uses its
3 regulatory authority to prevent these areas from
4 being developed for other uses. The priority use
5 areas designated for water-related industry are
6 located primarily in the areas covered by Bay Plan
7 maps 2, 3 and 4, and they include all the oil
8 refineries around San Francisco Bay. So those
9 maps are in the back of your handout.

10 Regarding dredging. Many of the marine
11 terminals that service the petroleum industry in
12 San Francisco Bay require regular dredging.
13 Pursuant to our law permits are required for any
14 dredging and dredge material disposal in the Bay.

15 BCDC has worked with the petroleum
16 industry and other frequent dredgers to insure
17 that dredging permits are processed expeditiously,
18 even though dredging permit issuance is
19 complicated by issues of chemical and biological
20 testing of sediments and alternative analysis for
21 disposal locations.

22 Our law requires BCDC to respond within
23 30 days of the submittal of a permit application
24 regarding any additional information needed to
25 file the application as complete. We're also

1 required to act on all complete permit
2 applications within 90 days of their filing.

3 Our records show that the average time
4 for our staff to respond with a 30-day letter to
5 dredging permit applications for refineries has
6 been 24 days. And BCDC has issued dredging and
7 dredge material disposal permits an average of
8 18.5 days after they have been filed as complete.
9 Thus our staff is acting far quicker than required
10 under state law.

11 PRESIDING MEMBER GEESMAN: Are those
12 requirements deadlines something that was in your
13 original enabling statute? Or is that something
14 that was added later on?

15 MS. LACKO: I believe portions of those
16 were in our regulations and modified later on.

17 PRESIDING MEMBER GEESMAN: No
18 substantive change, in your judgment, as to the
19 quality of review that you've been doing with
20 these tighter deadlines?

21 MS. LACKO: No, and I'll tell you why,
22 and part of that is because of the type of
23 coordination we've been doing with the other
24 federal and state agencies that regulate dredging.

25 And that process has happened through

1 the joint long-term management strategy, the LTMS.
2 That's a strategy for dredging and dredge material
3 disposals in San Francisco Bay. The LTMS process
4 brought together the U.S. Army Corps of Engineers
5 and BCDC, the Regional Water Quality Control
6 Board, and the U.S. Environmental Protection
7 Agency. I believe also the California Department
8 of Fish and Game is involved in that.

9 They provide a predictable and uniform
10 multiagency process and a blueprint for dredging
11 and disposing dredge materials in the Bay. They
12 also established a dredge material management
13 office, which is sort of their one-stop permit
14 shop. So rather than go to each agency
15 individually, dredgers go through the DMMO, dredge
16 materials management office, and have their review
17 by all agencies at the same time.

18 PRESIDING MEMBER GEESMAN: And the
19 federal agencies are able to coordinate on that
20 timetable, as well?

21 MS. LACKO: Yeah, in fact the U.S. Army
22 Corps of Engineers holds the -- hosts the DMMO
23 meetings in their offices.

24 PRESIDING MEMBER GEESMAN: And the
25 permit that is issued, is there a state permit and

1 a federal permit issued simultaneously then?

2 MS. LACKO: They are issued, they are
3 reviewed together, the permits are still different
4 permits. So the Regional Water Quality Control
5 Board still issues the 401 certification that
6 they're required to issue; the Army Corps issues
7 their permit; BCDC issues its permit. We do have
8 one -- we did collaborate to create one permit
9 application form for dredging that the applicants
10 can fill out that will satisfy all the needs of
11 those participating agencies.

12 With regards to oil spill prevention and
13 response, pursuant to the Lempert-Keene-Seastrand
14 Oil Spill Prevention and Response Act, BCDC
15 participates in a coordinated effort among state
16 and federal agencies to insure that San Francisco
17 Bay resources are protected from oil spills.

18 BCDC assists the Administrator of the
19 Department of Fish and Game, their office of oil
20 spill prevention and response, or OSPR, in
21 coordinating with other state and federal
22 agencies. BCDC participates in the State
23 Interagency Oil Spill Committee, the Harbor Safety
24 Committee of San Francisco Bay Region, the U.S.
25 Coast Guard San Francisco Bay/Delta Area Committee

1 and the OSPR Technical Advisory Committee.

2 Through this coordinated effort with the
3 petroleum industry and other agencies BCDC also
4 participates in studies and drills for oil spills,
5 to plan for oil spills and to create contingency
6 plans.

7 BCDC's coordination with other agencies
8 in oil spill prevention and response insures that
9 our policies and processes for providing a high
10 level of environmental protection are consistent
11 with other federal and state agencies, and provide
12 a high level of uniformity and predictability for
13 the petroleum industry.

14 You also asked us to talk today about
15 our role in administering CEQA. BCDC doesn't
16 usually have a significant role as a lead agency
17 because we are a regional agency. That usually
18 goes through the local governments first. We are,
19 however, a responsible agency and we do typically
20 comment on documents and communicate with local
21 governments. For all our BCDC permit
22 applications, a final CEQA document is required to
23 file an application as complete.

24 Specific to the petroleum industry the
25 Corps of Engineers is usually the lead agency on

1 dredging projects where a federal environmental
2 impact statement is prepared. And the State Lands
3 Commission is usually the lead agency for projects
4 related to marine terminals.

5 When BCDC is the lead agency we are
6 CEQA -- our process is CEQA equivalent. We
7 prepare an environmental assessment with our
8 permit documents.

9 PRESIDING MEMBER GEESMAN: So that means
10 you've been certified by the Resources Agency as a
11 CEQA equivalent process?

12 MS. LACKO: I'd have to defer to Jeff to
13 answer that question.

14 MR. BLANCHFIELD: Yes.

15 PRESIDING MEMBER GEESMAN: Okay, thanks.

16 COMMISSIONER PFANNENSTIEL: Excuse me.

17 When might you be a CEQA agency? What would an
18 example be of a project when you would be the lead
19 agency?

20 MS. LACKO: Where we require a permit
21 for a project and the local government doesn't, so
22 that their CEQA responsibilities aren't triggered.

23 Also with regard to environmental
24 justice, BCDC doesn't have any legal authority to
25 deny a permit based on environmental justice

1 issues, or place conditions on a permit. But our
2 Commission has been sensitive to those issues and
3 they requested a briefing from the State Office of
4 Planning and Research. And then subsequently
5 adopted as an objective, and the strategic
6 planning goal that the staff will provide the
7 Commission with an analysis of environmental
8 justice issues and appropriate planning and permit
9 documents.

10 And then furthermore BCDC has a number
11 of staff people who have gone through
12 environmental justice training and are designated
13 as the office experts and the people that can act
14 as a resource in the office for other folks
15 working on permits or planning projects.

16 So, typically through these processes
17 what we aim to do is insure that the Commission
18 decisions do not disproportionately impact low
19 income and minority areas, and that the project
20 benefits can be recognized in those areas and are
21 not diverted to wealthier areas.

22 Do you have any questions?

23 PRESIDING MEMBER GEESMAN: I had one on
24 pipeline regulation. If a pipeline is sited
25 beneath the Bay, is that something that you have

1 to issue a permit on?

2 MS. LACKO: Yes.

3 PRESIDING MEMBER GEESMAN: And do you
4 then have any followup compliance obligations? Do
5 you inspect pipelines, or require ongoing reports
6 by the permit holder?

7 MS. LACKO: I'd say that that's project
8 specific. But, oftentimes we do have monitoring
9 requirements in our permits that we have to -- we
10 receive monitoring reports on various types of
11 projects. And then, of course, we have our oil
12 spill prevention and response program.

13 COMMISSIONER BOYD: Would the Office of
14 Pipeline Safety in the State Fire Marshal's
15 Office, do you work with them or they work with
16 you on these pipelines that obviously touch
17 multiple jurisdictions, i.e., the Bay?

18 MS. LACKO: I have to say I don't recall
19 working with the State Fire Marshal on these
20 pipeline projects. On most of the -- we've had
21 one major pipeline project come through our
22 office.

23 MR. BLANCHFIELD: Could I just --

24 MS. LACKO: Yes.

25 MR. BLANCHFIELD: We have worked closely

1 with the State Fire Marshal and the Office of
2 Pipeline Safety on many occasions, some that
3 Leslie may not have been involved in. But
4 particularly the Kinder-Morgan pipeline break in
5 Suisun Marsh recently, close coordination with
6 that office, working also with the industry.

7 So, in areas where there are pipeline
8 issues we closely coordinate with the state
9 agencies and come out with what is an agreeable
10 condition we can put in our permit, too,
11 concerning monitoring and checkups by the agencies
12 that have the expertise to do that. So we work
13 very closely with them.

14 PRESIDING MEMBER GEESMAN: But you
15 wouldn't include yourself as one of the agencies
16 with the expertise to conduct that monitoring?

17 MR. BLANCHFIELD: That's correct. We
18 recognize where we do and where we do not have
19 expertise, and then defer it to the agency or
20 agencies that have that expertise in that area.
21 And make, as a condition of the permit to the
22 permittee, that the monitoring takes place and lay
23 out the specifications on how that takes place,
24 under what conditions and when.

25 PRESIDING MEMBER GEESMAN: Now that

1 would apply presumably to permits issued by BCDC
2 since 1965. Are there legacy pipelines within
3 your geographic jurisdiction, but because they've
4 never had to come to you for a permit, don't
5 receive scrutiny from you?

6 MR. BLANCHFIELD: I'm sure there are
7 many, as we're beginning to find out now, as we
8 just found out last week with a break in the
9 Kinder-Morgan pipeline at the Port of Oakland,
10 which happened to be at the entrance of one of the
11 major container terminals that had heavy trucks
12 rolling over it for I don't know how many years on
13 a daily basis, that is the case.

14 There are many pipelines. And again,
15 our jurisdiction, you must understand, is very
16 narrow, 100 feet along the shoreline. So in cases
17 such as the pipeline from Chevron up to Pittsburg,
18 years ago we issued a permit because it tracked
19 very closely within that jurisdiction. In fact,
20 that's being looked at, being upgraded right now,
21 we're reviewing that pipeline and its effect on
22 the Commission's jurisdiction as part of the
23 environmental impact review process.

24 I think, as many of us find out,
25 pipelines are in areas where we did not know they

1 existed when breaks occur.

2 PRESIDING MEMBER GEESMAN: Thank you
3 both very much. Okay, we're a little ahead of
4 schedule, unless the County of Contra Costa has
5 shown up. Guess not.

6 This is a period that we'd set aside for
7 hearing from members of the public, environmental
8 or union groups. I only have one blue card so
9 I'll call him first. But I suspect there may be
10 others that want to address us.

11 Dr. Henry Clark, West County Toxics
12 Coalition.

13 DR. CLARK: Good morning.

14 PRESIDING MEMBER GEESMAN: Good morning.

15 DR. CLARK: My name is Dr. Henry Clark;
16 I represent the West County Toxics Coalition based
17 in Richmond, California, one of the oldest
18 environmental justice organizations in the
19 country, over 21 years now. Also I'm a member of
20 the Contra Costa County Hazardous Materials
21 Commission, and a member of the California
22 Environmental Protection Agency's Environmental
23 Justice Advisory Committee, also; as well as
24 coChair of the State CalFed Environmental Justice
25 Advisory Committee.

1 I'm glad to be here this morning to hear
2 the testimony and to make some comments on
3 particularly the issues of environmental justice,
4 which is a major concern to the community that I
5 live in in north Richmond, adjacent to the
6 Chevron-Texaco Refinery, as well as other
7 communities that I work with and represent.

8 When we talk about environmental justice
9 and the injustices that we have experienced over
10 the period of a lifetime in our communities by the
11 disproportionate impact from refineries and other
12 facilities in our community, not only in terms of
13 the periodic fires and explosions that we have to
14 experience, the daily emissions and just the
15 chemical pollutant and poisoning of our community
16 and the resulting health problems. The high rates
17 of our asthma and cancer and respiratory problems
18 in our community.

19 So when we attend hearings like Mr. Hill
20 from the Air District was referring to around new
21 source review and title 5 permitting process, what
22 we expect to see happen is to address some of the
23 issues and concerns that our communities have that
24 would give us some relief in terms of adopting
25 some measures in this permitting process that

1 would reduce the disproportionate impact that our
2 communities already have, -- requiring pollution
3 prevention equipment, closing down of older parts
4 of the refinery, or something in the permitting
5 process that would give some type of relief to our
6 community. Rather than permitting a process and a
7 situation that maintains the disproportionate
8 impact on our community. And even worse, permits
9 a increase in the disproportionate impact on our
10 community.

11 Now, we don't equate that with any sense
12 of environmental justice because environmental
13 justice, in our meaning, is that we're trying to
14 get at a sense of environmental justice, which
15 we're not there yet.

16 So we should be thinking in terms of how
17 we can reduce a already disproportionate impact on
18 our communities. And if that's not part of the
19 permitting process, then environmental justice is
20 not happening.

21 You know, our communities don't want to
22 hear a whole lot of excuses about how we can't
23 make things happen to benefit the best interests
24 of communities. When you're talking about
25 primarily low income communities of color, you

1 know, and we always have some type of excuse as to
2 why we can't, you know, give them any type of a
3 relief.

4 First of all, you know, it's a tragedy
5 that here in 2005 that we have to even be talking
6 about any environmental justice in the first
7 place. Because of the fact that the -- while we
8 are talking about environmental justice and
9 environmental injustice should mean that we have
10 not been diligent in providing justice for
11 everyone in this society in the first place, where
12 we're even talking about trying to get some
13 environmental justice.

14 And the point is is that empty talk just
15 won't get it. We got to look at some of the
16 foundation reasons as to why we even get to this
17 point in the first place that we have to even deal
18 with these environmental justice, you know, the
19 whole political corruption. I'm sure you all
20 familiar with political corruption. I'm sure that
21 ain't nothing new to none of us how the political
22 process is corrupt by money, money and other
23 influence peddling that denies us any
24 environmental justice.

25 That's why it's so important that

1 decisions be made on the local level where
2 communities can hold the decisionmakers
3 accountable. And also participate in the process,
4 you know. Our communities cannot get up to
5 Sacramento and even here in Martinez to hear the
6 concerns. We are the public. Environmental
7 justice mean meaningful public participation. And
8 that means making it possible for communities to
9 be able to participate in the process.

10 And believe me, you know, these
11 meetings, especially even as far as Sacramento,
12 just don't get it for meaningful public
13 participation.

14 So, we need to really look at these
15 issues when we talking about environmental
16 justice. And the test of whether any
17 environmental justice is really happening is not
18 that you have some good words on a piece of paper,
19 talking about some environmental justice. It
20 comes down to the nitty-gritty, as they say, of
21 where the rubber meets the road, and is what type
22 of results are we getting in our community, you
23 know.

24 Is the emissions going down? Is the
25 refineries operating safely? Are we looking at,

1 you know, any type of fair distribution for
2 locating facilities and risk? You know, it ain't
3 fair if we're creating garbage, or we're creating
4 pollution and all of that garbage and pollution is
5 dumped in front of certain individuals because
6 based on race or class or whatever, that's not a
7 fair proposition.

8 So we have to begin to look at where we
9 are locating things, where we are siting
10 facilities, who are bearing the risk, who are
11 getting the jobs. It's very disheartening and
12 disturbing to me and my community to look at a
13 whole lifetime and we being bombarded from
14 chemical pollutions from the Chevron-Texaco
15 Refinery there.

16 The health care -- no health care for
17 our people who are sick in the community. And
18 then we see in the morning and after work all
19 these jobs going driving through our community,
20 putting more pollution from the cars and the
21 trucks that's going backwards and forward to the
22 industrial operation. And none of those cars are
23 stopping in our community. None with those
24 paychecks that are spending and investing in our
25 community. Yet we're the ones that's getting

1 sick. We're the ones that have to suffer the
2 consequences, you know, and that's not a fair
3 situation.

4 And so we talking about environmental
5 justice at all of your spheres of influence, you
6 need to, in the finally, and have some type of a
7 list of rankings of criteria to say, look at,
8 well, what type of relief did we give to these
9 communities that are impacted by the operations
10 that we permit, you know. And you need to check
11 up on that. Not just have some nice words, you
12 know, because that don't get it, as you very well
13 know, you know.

14 We have what is called, some of us who
15 practice it or believe in it, you know, we have
16 the Holy Bible with a lot of good things in it.
17 But it don't mean nothing if you give it to the
18 devil to implement.

19 Thank you.

20 COMMISSIONER GEESMAN: Dr. Clark, let me
21 ask you how satisfied you've been or members of
22 your organization have been with the way in which
23 the City of Richmond has regulated the Chevron-
24 Texaco?

25 DR. CLARK: Well, I'm glad you asked

1 that question there because we're not quite
2 satisfied at all. As a matter of fact, you know,
3 I'm quite disturbed that there is no one here from
4 the City of Richmond.

5 The City of Richmond is one of the major
6 cities in this county where environmental
7 injustices are going on. And, you know, we've
8 been pushing the, that is the West County Toxics
9 Coalition and community, other organizations, have
10 been pushing the City to do more around
11 environmental justice.

12 And the City just have not met up to the
13 standards. The City continued to permit
14 operations that increase the disproportionate
15 impact on our communities. The City apparently do
16 not really understand what environmental justice
17 is all about.

18 They say, or the City Attorney's Office
19 says that there's no need for the City to adopt
20 any new environmental justice ordinances because
21 there's already enough laws on the books to get to
22 environmental justice already.

23 Well, if that was the case, why are we
24 not there? Why are we not there, you know? And
25 though we have a CEQA process, but the CEQA really

1 haven't got us there, and it needs to really -- it
2 could if there was some people who were enforcing
3 the CEQA process that was really aware of
4 environmental justice and looked at the impacts of
5 a operation and how it maybe disproportionately
6 impacted certain communities, and addressed that.

7 But it really doesn't focus on the
8 environmental justice in that particular sense, or
9 raise the consciousness of those decisionmakers to
10 the consideration that, you know, historically
11 lower income communities of color are
12 disproportionately impacted. And we need to make
13 sure that this particular process and this
14 particular thing that we are considering siting
15 now don't continue to increase those impacts.
16 And, in fact, if we can do something to reduce the
17 impact.

18 And so the City's, you know, just not
19 there yet. Of course, as I indicated, the City's
20 dealing with unfortunately a whole lot of internal
21 problems that was all mismanagement and corruption
22 and other things that keeps the City from doing
23 really anything. I'm surprised that we still even
24 have a City of Richmond even operating today.

25 But, no, the City have not been up to

1 its job.

2 PRESIDING MEMBER GEESMAN: Thank you
3 very much.

4 COMMISSIONER BOYD: Thank you.

5 DR. CLARK: You're welcome.

6 PRESIDING MEMBER GEESMAN: I'm out of
7 blue cards, but I recognize a familiar face.

8 MR. KARRAS: Good morning, Commissioner
9 Geesman and Commissioner Boyd. I'm Greg Karras
10 with Communities for a Better Environment. I know
11 there's some other cards. I brought another one
12 with me if I could pass these up.

13 As I said, I'm Greg Karras, Senior
14 Scientist with Communities for a Better
15 Environment. It's been a little less than a year
16 since you've invited me to speak, I think before
17 both of you, on electricity, where I have a few
18 years of expertise.

19 I have a few more, about 25 years of
20 experience in dealing with oil refinery and
21 related tanks, et cetera, industrial
22 investigation, pollution prevention engineering.

23 I guess I'd like to start out by
24 agreeing completely with Dr. Clark's answer to
25 your last question. The communities that live in

1 the shadow of oil refineries in California already
2 have too little protection from disproportionate
3 environmental impacts.

4 CBE's biggest concern with this proposal
5 is that it would make that bad situation worse.
6 The idea that this proposal would maintain
7 adequate environmental protection and promote
8 environmental justice is just dead wrong.

9 First, more pollution. This proposal,
10 at bottom, seeks to expand the capacity of what is
11 already the biggest industrial polluter in the
12 state. And I think your staff will tell you, if
13 you don't already know, that most, if not all,
14 pollution-related aspects of this industry are
15 expected to increase with increased production. I
16 don't think it's really controversial that
17 pollution overall would increase.

18 And then, of course, you've got to think
19 about the continued and increased pollution from
20 the tailpipe, that expanded -- it would increase
21 pollution, no doubt about it. It would not
22 protect the environment. That idea is wrong.

23 Further, and I note that at least in
24 CBE's view your staff and the Commission has not
25 adequately investigated this. The kinds of

1 switches in crude slate that are actually -- have
2 been centered around these refineries in these
3 communities for more than ten years now, switching
4 to poorer quality, cheaper what we call dirty
5 crudes.

6 This has been documented to increase the
7 rates of pollution for some pollutants, pollution
8 per barrel refined, by an order of magnitude or
9 more. For individual communities this is a very
10 significant risk, increased risk, to people who
11 already have communities -- families that already
12 have increased rates of pollution-related health
13 problems, measured higher levels of pollution;
14 spills, fires and explosions on top of that.

15 And, you know, to take away their local
16 elected officials' power to make those decisions,
17 and the community's ability to hold a site-
18 specific official elected in this community or in
19 Richmond accountable at the ballot box, to dealing
20 with the problem that they have in their community
21 that may not occur in Sacramento.

22 And then on top of that, to weaken their
23 ability to protect themselves in court by making
24 them go to the Supreme Court, who, as you probably
25 know, it's my understanding, although I'm a

1 scientist, it's my understanding that under this
2 proposal the Supreme Court would take the case,
3 but could deny it without even reviewing the
4 record if it chose to.

5 Now, how would you feel? Try to put
6 yourself in that position. Imagine that your
7 family lived near a refinery; was being poisoned,
8 or you thought they were. And you were told,
9 sorry, we're taking the power away from the
10 elected officials in your community. You can't go
11 to them and hold them accountable for is. And, by
12 the way, you can't go to your Superior Court,
13 either.

14 Would you call that justice? Or would
15 you call that injustice? We call that
16 environmental injustice.

17 And what would it do to help? Will gas
18 prices stop increasing? No. Your staff tells you
19 this. The primary driver is increasing global
20 demand for limited supplies of oil. Gas prices
21 will increase until we find alternatives to
22 petroleum for our fuels. This proposal won't stop
23 gas prices from increasing. In fact, it could
24 make the long-term situation worse.

25 The last time I was before you on

1 electricity I spoke at some length about the
2 somewhat obvious problem that the price of oil,
3 when it goes up, is already having impacts on our
4 economy. Your staff says so, too.

5 If we wait, if we delay until the price
6 is so high that our economy cannot afford the
7 investment in the alternatives to oil that we
8 need, then we'll have a real economic crisis on
9 top of the climate change crisis, on top of the
10 environmental injustice and the harm to families
11 living near refineries. And it'll be too late to
12 avoid that.

13 This proposal would actually help to
14 lock into place more infrastructure for the wrong
15 thing, if it works, when, as your staff has told
16 you, we should be putting into place more
17 infrastructure for alternatives.

18 A couple of examples that I don't think
19 were adequately addressed. Public transit. Your
20 documents say that you didn't look at that in
21 detail. Well, there's a huge funding disparity
22 between intercity transit and regional transit.
23 And that is a huge apple; it's a low-hanging
24 fruit. Why not push to get funding for intercity
25 transit. You could increase ridership. You could

1 decrease fuel use. You could decrease demand on
2 the short term. And it's do-able, without
3 spending more money. Just more fairly
4 distributing it. And you could even call that a
5 step towards environmental justice. You haven't
6 looked at it.

7 What about flares? This process has
8 been used by the industry to cast aspersions on a
9 community and Air District-driven proposal that's
10 going on right now, both north and south, to start
11 finally dealing with illegal routine flaring, a
12 major source of pollution.

13 Well, guess what? Flares are a little
14 bit like taking your temperature. If you got a
15 lot of flaring at a refinery it often means that
16 refinery is at risk for having a major upset,
17 spill, fire, explosion and outage.

18 The only thing that I see that your
19 staff has been able to link to the existing
20 refinery permitting situation, where your staff's
21 actually been able to link the existing refinery
22 permitting problems to any change in prices is
23 when there's an outage, an unplanned outage at
24 refineries.

25 Right now this Commission could be

1 supporting the Bay Area Air Quality Management
2 District and the South Coast District in dealing
3 with flaring problems to protect the environment
4 and for environmental justice. You aren't doing
5 that; you should be. If you did that, you'd be
6 doing something, you'd actually then be doing
7 something that at least in the short term would
8 help to prevent these outages, which, again, I
9 believe are the only thing that your staff has
10 linked to short-term increases in prices of
11 gasoline.

12 All the way around, when I say dead
13 wrong, I say that not to grandstand, but to be
14 direct. This creates a worse environmental
15 justice problem where it's already severe. It
16 creates a worse pollution problem in the biggest
17 source of pollution in our state. And it doesn't
18 solve the problems that you say you want to solve.
19 And it might even make things worse for our energy
20 future.

21 Now, what really makes it difficult for
22 us to engage in this process is that on top of all
23 of those things, which we should be discussing and
24 should have been discussed already, I grant you,
25 we could use your help in putting these kinds of

1 questions on the table more squarely and in a
2 fairer way.

3 Instead of blaming environmental
4 protection, this idea that we hear, at least from
5 the industry, and I think possibly from this
6 agency, or at least you aren't doing enough to say
7 the industry's wrong when they say it in regard to
8 this forum and it gets published in the media,
9 this idea that the reason we don't have enough
10 refinery infrastructure is because local
11 government permits have caused the infrastructure
12 to be bad.

13 That's just propaganda. That's anti-
14 environmental propaganda. And I'd ask you to look
15 at your own permitting system. You know, your
16 staff's told you, that we export fuels, we export
17 diesel and gasoline to Nevada, almost all of
18 Nevada's supply. More than half of Arizona's.

19 You also know that we import almost a
20 quarter of our electricity. So we're exporting
21 fuels where the locals have been permitting it.
22 We're importing electricity where the CEC has had
23 the same authority you're seeking for refineries,
24 for many years, over major power plants, so you
25 haven't shown any proof that your proposal is even

1 going to be better.

2 And yet you keep holding these hearings
3 where the oil industry comes and has a forum to
4 spout this anti-environmental propaganda and you
5 don't say anything about it. And that is
6 injustice, too.

7 And if you want to have a more fair
8 dialogue with the community, it's time to start
9 speaking up about those injustices in your own
10 process. And to start leveling the playing field
11 and letting a real conversation continue.

12 I think I've said my piece. If you have
13 any questions I'd be happy to answer them.

14 PRESIDING MEMBER GEESMAN: Well done,
15 Mr. Karras. But, you know, again I think that
16 we've got some apples and oranges there. And I
17 wanted to explore a couple things that you said.

18 First of all, as I indicated at the
19 beginning, our 2003 report put forward the
20 electricity permitting process as a template. Not
21 a proposal on the table today. We're trying to
22 gather information.

23 And I don't know that it's appropriate
24 to really draw apples to apples comparison between
25 the siting process in electricity and the

1 development of the refinery infrastructure.

2 So we've tried to be very clear that
3 it's not clear this template is a good fit. But
4 in order to stimulate discussion and to evoke
5 contributions such as yours, we have put it
6 forward and asked people to be as precise as
7 possible in pointing out where it perhaps is not a
8 good fit.

9 You said you agreed with everything Dr.
10 Clark had said about the City of Richmond. But,
11 you know, it strikes me that the problems that we
12 have in the refining sector, the environmental
13 consequences of those problems come from a status
14 quo permitting process that you seem to be pretty
15 enamored with. And that's pretty jarring to me.
16 I can't imagine what it is you see about the
17 current system of decisionmaking that you feel has
18 a beneficial impact on the communities and
19 constituencies which you represent.

20 MR. KARRAS: I'm not sure there's a
21 question in there, but I --

22 PRESIDING MEMBER GEESMAN: Well, let me
23 go a bit further, and that is that these are quite
24 often very difficult scientific and technical
25 issues. And I think your organization in

1 particular has been very effective at contributing
2 at that scientific and technical level.

3 I'm not certain that the way in which
4 society's decisionmaking process on permits for
5 refineries properly takes into account those
6 scientific and technical points. And I think in
7 many instances your organization has been
8 successful in court on that very basis.

9 Elected officials quite often have a
10 variety of different considerations to bring to
11 bear, and aren't necessarily restricted to their
12 consideration of an evidentiary record.

13 MR. KARRAS: Um-hum. Yeah, well, okay,
14 I think I understand where you're coming from.
15 It's, so from our perspective, I think you're
16 right that you have not made a specific clear
17 proposal.

18 And when you do I hope you make a
19 different one than what you've generally outlined.
20 I think I've been clear about -- CBE's been clear
21 about that.

22 But it's also a problem for us that
23 there isn't a specific proposal. And I would have
24 to disagree with the idea that because we don't
25 like what you're proposing therefore we do like

1 what exists now.

2 What we're trying to say very clearly is
3 that, yes, Dr. Clark is right. What exists now is
4 not working adequately. And at the same time,
5 specific to this proposal, broadly outlined as it
6 is, this proposal would make it worse.

7 That doesn't mean that we agree with the
8 existing situation. In fact, what we're trying to
9 say is because there's existing injustice and
10 existing disproportionate pollution it would be
11 all the more important not to make that situation
12 worse. That's what we're trying to say.

13 PRESIDING MEMBER GEESMAN: Now you've
14 participated quite a bit, I think, in the
15 electricity power plant permitting processes
16 around a couple of the plants in San Francisco,
17 have you not?

18 Is it your feeling that the State Energy
19 Commission's involvement in that has taken away
20 power from the local government?

21 MR. KARRAS: Yes, I think that if it was
22 up to San Francisco that the Unit 7 proposal would
23 have been denied many years ago, perhaps in 2001,
24 when they passed an ordinance setting specific
25 standards that Mirant Corp. refused to deal with,

1 although they could have.

2 And, you know, that's an ongoing
3 process. That permit is still in the works. The
4 CEC -- the siting commission has just agreed with
5 Mirant -- disagreed with the City and us in
6 stopping it four years later, when the company's
7 bankrupt, when there's a better plan that the Unit
8 7 project is actually in the way of for reasons
9 you probably understand. Things like queue -- in
10 the transmission queue.

11 I'm not sure how appropriate it is to go
12 into details of that, but -- and as I said at the
13 beginning, I have less, have somewhat less
14 experience, at least years of experience in
15 electricity, than in the oil industry sector with
16 the environment. That's the only process that
17 I've been involved in all the way through on a
18 siting, although my organization's been involved
19 in several others. And I've had some involvement
20 in parts of several others.

21 And I think that it's -- yeah, you're
22 right, it's -- electricity isn't exactly the same
23 as oil, right now, anyway. But to the extent it's
24 different I would offer that oil refineries are
25 more complex than even combined cycle power

1 plants.

2 And, you know, it's not just a question
3 of coal or natural gas. There are all these
4 different gradations in the quality of the inputs
5 that relate to hundreds, if not thousands, of
6 technical questions about what kind of process
7 configuration.

8 And all of that has environmental
9 consequences. It also has long-term energy
10 consequences. I don't want to see us going to the
11 bottom of the barrel, increasing pollution,
12 locking ourselves into a situation that your staff
13 has aptly described.

14 I think your staff, in their reports on
15 alternatives, over the last two years, although
16 they didn't look at everything, they were clear,
17 the only way out of this long term is to get out
18 of dependence on petroleum. Let's not lock
19 ourselves into more and let's not do it on the
20 back of the most disproportionately impacted
21 communities. That's where we're coming from.

22 PRESIDING MEMBER GEESMAN: And how would
23 you stack up our staff against say the City of
24 Richmond's Staff on these questions?

25 MR. KARRAS: Well, I'm going to change

1 your question a little bit because what bothers me
2 the most is that when we talk about expertise,
3 I've worked with communities and people like Dr.
4 Clark and hundreds of other community members in
5 Richmond, Martinez and Rodeo for many years and
6 they have different expertise.

7 Because they have expertise on these
8 issues that I don't have, that you don't have,
9 that none of your staff -- that no one -- only
10 people who live in the community have the kind of
11 expertise about the refinery that these folks
12 have. And they, as you've seen with electricity
13 in San Francisco, when they get motivated and when
14 they have the opportunity they learn about it,
15 they understand it. And they can actually come up
16 with better solutions.

17 So, it's -- but the difficulty for the
18 community is to figure out how to engage with the
19 policymakers. It's been very hard, I think you've
20 seen, for the community in San Francisco on power
21 plants to engage with the California Independent
22 System Operator in Folsom. They express the same
23 frustration about engaging with your Commission.

24 And, yes, there's lots of frustrations
25 in engaging with local government officials. Some

1 of the ones that I engage with are in this
2 audience right now on refinery issues. And it's
3 frustrating, it's not perfect. But they're in our
4 community. They work for people who community
5 members elect. There's more accountability.
6 There's no question about that.

7 And, again, going back to electricity,
8 as you raised it, in some ways the situation in
9 San Francisco is an example of how that local
10 accountability can work, even in spite of having
11 laid over it a state and even federal energy
12 electricity infrastructure that makes it difficult
13 for us to have local accountability. We have been
14 able to hold San Francisco accountable to coming
15 up with a solution that they can propose, even
16 though we couldn't hold them accountable to
17 dealing with the competing solution; that's in
18 your court.

19 Am I making my --

20 PRESIDING MEMBER GEESMAN: Yeah, I would
21 actually think that the San Francisco experience,
22 or at least the limited insight I have in it the
23 couple of years I've been on the Commission, would
24 be a case history of actually the empowerment of
25 local government, the local input into a licensing

1 process that at least nominally is a state
2 license.

3 But I don't think there's any doubt as
4 to the impact that both the local community and
5 the local elected officials have played in that.

6 I guess the one other thing that I'd add
7 to your characterization, to the best of my
8 knowledge every public hearing on any of those
9 projects that the Energy Commission has held, has
10 been held in the affected neighborhood with
11 Commissioners, Gubernatorial appointees,
12 participating.

13 So I don't think anybody's been required
14 to go up to Sacramento to participate in those
15 electricity licensing processes.

16 MR. KARRAS: I agree with you that as
17 far as I know the formal CEC process on the San
18 Francisco electricity situation -- well, Unit 7,
19 the workshops and hearings were held in San
20 Francisco.

21 When it got to the hearings, though,
22 they were held during the day. They went for
23 hours and hours. Public comment was at the end.
24 I saw hundreds of people come, couldn't stay,
25 didn't get a chance to speak in the public

1 comments.

2 And even then it doesn't address the
3 main point that I made about this, that it's just
4 not the same to have the decision made by an
5 appointed official in Sacramento as compared to
6 someone in the local community that's elected by
7 the community.

8 There's, you know, we call it democracy
9 for a reason. And there's a reason why we have
10 local elected officials. There are site-specific
11 issues. Refinery hot spot pollution is one of
12 them.

13 PRESIDING MEMBER GEESMAN: I agree with
14 that.

15 COMMISSIONER PFANNENSTIEL: Mr. Karras,
16 just at the risk of opening a new can of worms on
17 this, one suggestion you made on an alternative
18 would be mass transit or public transit. And yet,
19 you know, we are a body that has, that I can think
20 of, virtually no direct responsibility there.

21 What did you have in mind when you
22 suggested that might be something we'd look at?

23 MR. KARRAS: No, not to be too flippant,
24 but, yeah, you're right, it would be a different
25 kind of audience if you were proposing taking over

1 the Metropolitan Transit Commission's authority.

2 (Laughter.)

3 MR. KARRAS: The point I was referring
4 to is roughly three-to-one disparity in dollars
5 spent on regional transit like BART versus
6 intercity transit per passenger mile and AC
7 Transit. I'm not sure about -- maybe someone can
8 help me out with this -- with transit in this
9 area, in Martinez, but AC Transit in Oakland and
10 West County and in San Francisco, the intercity
11 transit, they're cutting back service because of
12 budget problems.

13 Meanwhile low income people, people of
14 color who live in these intercity areas, they're
15 getting 33 cents on the dollar that a BART rider
16 gets for support. And that's largely, not all,
17 but largely a state decision.

18 If you're going to be weighing in on
19 what Air Districts and local governments do on
20 refinery permitting, it would at least be fair to
21 look at that, also, is sort of the point I'm
22 making.

23 Does that help?

24 COMMISSIONER PFANNENSTIEL: I got it,
25 thank you.

1 PRESIDING MEMBER GEESMAN: Thanks, Greg.

2 COMMISSIONER BOYD: Well, I'm a little
3 afraid to open this can, too, but Commissioner
4 Pfannenstiel and I have talked a lot about public
5 transit. And we have an appointment with the
6 Director of Caltrans to discuss energy Caltrans
7 interfaces as one of the things we intend to talk
8 about.

9 We have talked, and I have talked to
10 previous Caltrans folks, so I know you can't be in
11 all audiences that we have at all times. And I
12 just want to assure you and other members of the
13 audience that a lot of the points you referenced
14 there are activities underway. Maybe not as
15 aggressive or sufficient as you'd like to see, but
16 it's not that we have our head in the sand.

17 Alternative fuels is a big component of
18 both our reducing dependence on petroleum report
19 that Commissioner Geesman and I did, as well as
20 our 2003 Integrated Energy Policy Report. Our
21 reduction on petroleum dependence is something
22 that this agency has gone way out on a limb in
23 supporting.

24 So I think we've been a little more
25 courageous than you give us credit for. And the

1 new refineries issue, I know you haven't been in
2 many forums I have been in over a period of years,
3 but I think the oil industry would tell you that I
4 have publicly chastised them for saying the only
5 thing in their way of building new refineries is
6 either environmental regulation or local
7 regulation.

8 I have pointedly said I don't think you
9 have any intention of ever building a new refinery
10 in California. You like the tight supply
11 situation you created. So we have a little more
12 courage than you give us credit for in other
13 arenas. I know you can't be all things to all
14 people in all places.

15 But just for the benefit of the audience
16 there are a lot of fronts underway now. This is
17 just but one of them. And some of them do address
18 things you'd like to see being addressed. So,
19 just --

20 MR. KARRAS: But still you can't have it
21 both ways. Saying, as you did say in your report
22 that you just referenced, that the only way to
23 solve the situation is to reduce our dependence on
24 petroleum, doesn't cut it if what you actually do
25 is take permitting authority from local

1 governments and from local communities who are the
2 most active in protecting us from pollution from
3 the refineries.

4 You know, what'll end up happening is,
5 among other things, it would become another
6 environmental subsidy for petroleum.

7 Now, they don't need that, if you've
8 looked at their profits and their annual reports
9 on this cycle. That's not what's going on. You
10 might be right. It might be just as you said,
11 they like the tight supply situation.

12 But allowing more environmental
13 injustice isn't going to solve that. And it
14 certainly isn't going to solve global demand for
15 oil, which is going to drive prices up, regardless
16 of what else we do until we actually push forward.

17 So, I think it was courageous for this
18 agency to put forward a plan for aggressively
19 reducing dependence on oil. I think it would be
20 quite the opposite to back off that now and
21 instead try to build more refinery infrastructure.
22 And we're trying to be very clear about that.

23 So, we'll call it like we see it. That
24 was good. This is bad.

25 PRESIDING MEMBER GEESMAN: Well, I

1 should add that that report recommended a doubling
2 of federal CAFE standards, I think, at the time we
3 adopted it, by 2008. Two years have passed,
4 that's not going to happen.

5 It also called for a contribution of
6 nonpetroleum fuels in our supply mix by 2020 of 20
7 percent.

8 Both instances, I think, in that 20
9 percent combined with the CAFE doubling would have
10 resulted in a decline from current consumption
11 levels of petroleum by 15 percent -- I see people
12 nodding to my left -- despite that.

13 And I think in both instances those were
14 the single most aggressive recommendations, either
15 on the demand side or on the alternative fuels
16 side any official body in this country. Despite
17 that, we showed in the same report an inexorable
18 growth in demand for petroleum-related products,
19 and a growth far swamping our existing
20 infrastructure over the course of the next ten
21 years.

22 So, it's not an either/or choice in our
23 judgment. That I think is too simplistic. But
24 rather a mix of policies necessary to avoid, I
25 think, some even larger collisions with

1 environmental and economic realities.

2 One thing I will say on the
3 environmental side, we are developing a report in
4 this year's Integrated Energy Policy Report cycle
5 on the environmental performance of the petroleum
6 sector. And I'd strongly encourage you to monitor
7 our development of that report and hopefully share
8 your thoughts with us on it when we release it in
9 draft form.

10 MR. KARRAS: Yes. I'm tempted to
11 respond just one quick point. Those goals,
12 aggressive compared to others, yes. And, as I
13 said, the agency, two years ago or a year ago,
14 deserved praise for that. I'm not withholding
15 that.

16 The analysis showed that if gas prices
17 increased as much as they now have, that a lot
18 more would be cost effective. So, --

19 PRESIDING MEMBER GEESMAN: That's a good
20 point.

21 MR. KARRAS: And, you know, anybody can
22 get their crystal ball out and say what's going to
23 happen in the future. What we're willing to say
24 is that the price of oil is going to keep going up
25 until we find alternatives. If we don't do it in

1 time, then there's going to be a real crisis
2 characterized by an economy that can't afford
3 making the switch.

4 I think that's a valid prediction that
5 won't go away until we switch. And so I -- I mean
6 this is sort of, in terms of long-term planning,
7 this is where CBE is coming from. Is that we need
8 to make sure in the long term the main thing we do
9 is keep our eye on decreasing the legacy of, for
10 lack of a better word I'll call it subsidies, for
11 petroleum transportation, and increasing the push
12 for alternatives. And we don't know how much time
13 we've got.

14 PRESIDING MEMBER GEESMAN: As always,
15 thank you, Mr. Karras. The next one I'm afraid
16 I'm going to mispronounce. Edgar Ary.

17 MR. ARY: Ary.

18 PRESIDING MEMBER GEESMAN: Ary.

19 MR. ARY: My name is Edgar Ary; I'm with
20 CBE. I've been with them for about two years.
21 I'm concerned about -- I'm a volunteer -- I'm
22 concerned about my health.

23 To my understanding that the power is
24 taken away from the city, the city council, like
25 they turn it over to the state, which I really

1 don't agree on, you know, on that. Because who's
2 representing us? The city's supposed to represent
3 us, you know, the city, state and so forth.

4 So, you're talking about my health,
5 okay. And why take the power away, you know, that
6 represents to us, because I'm really concerned,
7 you know, my health, my family and everything
8 else.

9 And as I've been with the program I've
10 noticed that the refinery can recycle this
11 pollution that they're putting out in the air, you
12 know. They can recycle it to another product, you
13 know, to sell that.

14 So, you know, just wondering, I mean if
15 that's what you all doing, or what, what's
16 happening. Because you're dealing with my health,
17 okay. Because my health is very important.

18 That's all I want to say.

19 PRESIDING MEMBER GEESMAN: Well, thank
20 you. I'll clarify again, as I tried to with Mr.
21 Karras, looking at the way in which the state
22 permits electricity, power plants, we don't see it
23 as taking power away from the local government.

24 In fact, we have to make a finding that
25 local ordinances have been complied with. We do

1 have an override authority; that has very rarely
2 ever been invoked. And I think that at least the
3 way we would look at the way the electricity
4 permitting process works, it empowers local
5 government by giving them the full clout of state
6 government in issuing the permit.

7 In fact, I think that's been the
8 experience, although Mr. Karras might disagree,
9 that we've seen in the City of San Francisco. The
10 leverage provided by a state regulator, I think,
11 has bolstered the courage of some of the locally
12 elected officials.

13 And I suspect if we moved into this area
14 the same circumstance would result. I don't think
15 there's much about the way local government is
16 currently regulating oil refineries that has
17 helped your health or that of any of your
18 neighbors. I don't think they've done a
19 particularly good job about it, and I think that
20 what, in fact, is needed is a regulator with more
21 teeth.

22 MR. ARY: Okay, but they is doing a good
23 job, to my understanding, you know, when they was
24 in operation. So, why the state wants to step in?

25 PRESIDING MEMBER GEESMAN: We don't

1 think they are doing a good job.

2 MR. ARY: Oh. Okay, thank you.

3 PRESIDING MEMBER GEESMAN: Thank you.

4 Jane Turnbull from the League of Women Voters.

5 MS. TURNBULL: I'm not sure which of
6 these is the right one to use. Thank you.

7 As you are aware, the League has been
8 tracking a lot of these issues, but our focus has
9 really been on the electric industry because
10 that's where we have historically had the most
11 expertise.

12 We're tracking this because we think
13 that this is an area where our local leagues have
14 been involved in the past, and they have been
15 acutely concerned of how the process has worked.

16 I guess what I would like to say is I
17 don't think it needs to be an either/or, but it
18 can be a both/and. I think the state should have
19 a role in this because the state does have
20 technical competencies that are really unmatched.

21 Over the last couple weeks I did have a
22 chance to sit in on the Los Esteros permitting
23 process in Santa Clara where this -- or San Jose,
24 where a new power plant is being evolved. That
25 really was a very interesting experience because

1 the amount of work that went into that permitting
2 process was absolutely awesome. And the
3 requirements on the part of Calpine, the
4 developer, were very very significant.

5 Beyond that, there is going to be, with
6 the certainty of monitoring of all the mitigation
7 procedures into the long term, because that goes
8 into the permit that the CEC puts out there.

9 I left with a good deal of confidence in
10 terms of what that power plant is going to look
11 like.

12 Over the weekend I spent a little bit of
13 time looking at the preliminary staff assessment
14 for the Blythe transmission line, a 67-mile
15 extension of a transmission line in Riverside
16 County. Our San Diego League is taking a look at
17 that.

18 The 406-page document, and I didn't read
19 it all, was extremely well done, and the
20 conclusion at this point is that that transmission
21 line is not going in because the developer has not
22 yet met the requirements. So the rigorousness of
23 the assessment is really not to be questioned.

24 I think Commissioner Boyd and the League
25 have been in agreement for some months now that

1 the state needs to do some more land use planning,
2 and be more of a visionary in terms of land use.
3 That does not mean that the local people don't
4 have a role in this, as well. But there needs to
5 be a broader vision in terms of how we are looking
6 at our land and protecting our land. And, you
7 know, how the regional thinking has to be put into
8 a larger -- on a larger scale.

9 So, I think there is, perhaps the power
10 plant permitting process may not be the final
11 template, but I definitely think there's a role
12 for the CEC in making the infrastructure,
13 petroleum infrastructure permitting process far
14 more rigorous than it is right now.

15 PRESIDING MEMBER GEESMAN: Thank you,
16 Jane. Marc Joseph, California State Pipe Trades
17 Council.

18 MR. JOSEPH: Good morning,
19 Commissioners. My name is Marc Joseph; I am here
20 today on behalf of the California State Pipe
21 Trades Council.

22 I have been involved in refinery
23 permitting in both north and south California for
24 more than a decade. The comments I want to make
25 today focus mostly on refinery permitting rather

1 than storage facilities or marine terminals.

2 There's no question that the petroleum
3 supply infrastructure is at or near capacity. The
4 Commission's done a very good job documenting
5 that. And I think there's also no question that
6 we would be much better off had the
7 recommendations that you made in the last
8 Integrated Energy Policy Report been adopted at a
9 national level. Unfortunately I don't see that
10 happening any time soon.

11 I think there is a legitimate question,
12 though, as to whether the permit process, itself,
13 has anything to do with the capacity of the
14 infrastructure or we're simply seeing the effects
15 of increased consumption coupled with the closing
16 of many smaller, uneconomic refineries; in the
17 absence of any real economic incentive on behalf
18 of the oil companies to spend lots of money in
19 ways which would reduce retail prices.

20 Commissioner Boyd, I think you hit the
21 nail on the head. Tight supply is a good thing
22 for the supplier.

23 To get to the question that you've been
24 addressing now as to, you know, who should have
25 the authority here. I think it's important that

1 you have at your fingertips some basic facts,
2 important basic facts.

3 First, there's no question that when the
4 refineries were required to modernize to meet
5 California fuel specs for CARB2 and for the phase-
6 out of MTBE they were able to get their permits,
7 they were able to get them on time, they were able
8 to do the modifications and meet the regulatory
9 deadlines.

10 In the 1990s the refineries got permits
11 for and completed more than \$5 billion worth of
12 construction for CARB2. And almost another
13 billion dollars for the MTBE phase-out, all of
14 which were done on time with all the appropriate
15 permits.

16 So, on the really big projects there
17 really doesn't seem to be a problem that needs
18 fixing.

19 So, let's look at the other projects,
20 all the rest of the projects. I think there's a
21 misperception. The reality is that most
22 permitting for both large and small projects is
23 uneventful and propped. And I think you have to
24 be careful not to give too much attention to
25 particular poster-child permitting fiascos or

1 particularly bad land use decisions here or there.
2 Because those are the exception rather than the
3 rule.

4 At your Los Angeles workshop the South
5 Coast reported that they grant nearly 1000 permits
6 a year to the refineries. Steve Hill earlier
7 reported that very few permits here even trigger
8 public notice and comment. So when you're
9 thinking about the permitting, I think you need to
10 keep the reality in perspective. The overwhelming
11 majority, the vast majority of all permits just go
12 right on through with no issues; they're quick and
13 uneventful; and there's no public involvement at
14 all.

15 The representative from the City of
16 Benecia talked about a situation where they
17 actually have some land use authority. A grand
18 total of two EIRs in 15 years is how much they've
19 exercised that authority. That's how much they
20 have.

21 So, in terms of local land use
22 permitting I think it's really critical to
23 understand when the local government actually has
24 some authority. And it is the case that most of
25 the time there is no local land use authority over

1 most refinery projects.

2 I suggested to your staff informally
3 that they prepare a table for you for each of the
4 refineries listing exactly what the local land use
5 authority is, and under what circumstances it
6 exists. And I think you'll find that in most
7 cases there is no authority. And in other cases
8 where there is authority, it's when it reaches,
9 you know, in Benecia's case, the \$28 million
10 threshold; for Contra Costa County, for the
11 refineries there it's only when there's large
12 quantities of hazardous materials being used. But
13 otherwise there isn't much local land use
14 authority. The Air Districts are it.

15 So I think, and you've heard from the
16 Air Districts, they have, you know, a substantial
17 amount of expertise deployed to deal with the
18 permits. They have people who are expert
19 permitting engineers. They know what they're
20 doing for the most part.

21 So the idea that California is this
22 terrible permitting maze with dozens of hoops to
23 jump through every time a refinery wants to do
24 something I think just isn't true. I think it's
25 simply urban mythology.

1 I think the real problem with inadequate
2 refining capacity is not the permitting process,
3 itself, at all. It's that, unlike electric
4 utilities, the refineries are not regulated
5 utilities. They have no obligation to increase
6 capacity to meet demand. Their only obligation is
7 to shareholders to maximize profit. That's what
8 they're supposed to be doing.

9 So, if you consider and contrast the
10 efforts of electric utilities to meet the fear of
11 blackouts this summer with the efforts of the oil
12 companies, you find two very different pictures.

13 You've got on one hand, with the
14 electric utilities you've got, you know, all kinds
15 of energy efficiency programs and peak load
16 reductions; Edison signing capacity contracts left
17 and right; they're funding, bringing plants out of
18 mothballs, because they are a regulated utility.

19 And without passing judgment on whether
20 this is how we should organize our transportation
21 fuels system, the oil companies are not. They are
22 not regulated. And so if I'm a multinational oil
23 company and I get a very large return in the
24 supply sector of my business, and I get a return
25 in the retail sector, and my refining sector is a

1 very low margin industry where am I going to put
2 my money, particularly when having a tight supply
3 is to my advantage.

4 I think respectfully that the focus on
5 permitting is simply misplaced. That's not the
6 problem that we face here.

7 Now, according to Joe Sparano, my friend
8 from WSPA, California prices are high, in part
9 because California's a fuel island, and because we
10 have inadequate capacity. And this is a big
11 problem from the state's perspective, but not from
12 the companies' perspective.

13 I think if you look around you'll also
14 see that there's not some great backlog of permits
15 for refinery infrastructure projects, you know,
16 stacked up on the desks of local agencies around
17 the state. You may find that there are port
18 districts who have different interests other than
19 statewide energy policy at stake when they make
20 the decisions. And you certainly will find local
21 communities very concerned about repeated
22 accidental releases; and routine, rather than
23 emergency, flaring. And you'll find concern over
24 many times that modifications are done without any
25 permits at all.

1 So, I agree there's a problem, but I
2 don't think it's permitting that's the problem.

3 You've asked the question, you know, are
4 we better off with the Energy Commission rather
5 than a local land use agency making these
6 decisions. And perhaps, you know, is the power
7 plant model the right template.

8 I'm very fond of the power plant
9 process. The power plant siting process is one
10 that I think is excellent for the purpose that it
11 serves. But I think if you try to adapt it too
12 much to refineries you're going to hit a couple of
13 problems.

14 In most cases, because the only permit
15 granted is the permit from the Air District, any
16 additional permitting that the Energy Commission
17 does is simply adding a permitting hoop, not
18 subtracting or streamlining.

19 The second is the vast numbers of
20 permits involved here. You know, we've got 1000
21 permits a year from the South Coast. I don't know
22 what it is from the Bay Area, but it's a very
23 large number, certainly in the hundreds. So, you
24 know, that's something that's clearly beyond the
25 capacity of the Energy Commission to absorb.

1 So you say okay, well, maybe we should
2 have a threshold, like something akin to the 50
3 megawatt threshold. The problem here is it's
4 going to be extremely difficult to figure out what
5 that threshold is. You know, determining the
6 generating capacity of a power plant is easy.
7 Determining any kind of a size threshold is going
8 to be very difficult.

9 And let me give you an example. And you
10 all know this. Refineries are very complicated,
11 highly interconnected entities. And we're not
12 talking about new ones. We're always talking
13 about modifications to an existing refinery.

14 Give you a current example right now.
15 There's a refinery that's proposed to increase the
16 capacity of its hydrogen plant. They say that's a
17 stand-alone project. They've also proposed
18 another project which would increase the
19 production of a certain component of their output.
20 It just so happens to do that -- they said that's
21 a separate project, too, but to do that, of
22 course, they need more hydrogen.

23 And at the same time they have another
24 permit pending to increase the capacity of the
25 hydro-treater, to produce some more desirable fuel

1 outcome. Well, of course, that, too, is dependent
2 on increased hydrogen production. And all of them
3 require increased use of refinery boilers to bring
4 more steam.

5 So here you could be presented, you
6 know, one project, two projects, three projects.
7 And determining whether it's one or a collection
8 of three crosses some threshold will be a very
9 difficult question. And lots of time will be
10 consumed.

11 So I don't know how you can figure out
12 any kind of a line to draw which would say, okay,
13 this is a big enough deal that it deserves the
14 Energy Commission process. It's a practical
15 problem, but I think it's a very real problem.

16 And, of course, you know, I never met a
17 refinery project that didn't include some de-
18 bottle-necking.

19 Let me raise one other question, and I
20 want to preface this by saying this is -- my
21 comment is institutional; it's not at all about
22 who the Commissioners are right now. Right now
23 the Commissioners are, you know, you've got an
24 incredibly well -- an incredibly talented group.
25 But what we're talking about here is an

1 institutional change. I don't know who the
2 Commissioners are going to be ten years from now.

3 I think there's a danger of having an
4 agency which is an advocate for policy directions
5 be the same agency which is also the agency
6 granting the permits to facilitate that. There's
7 an inherent conflict in the mission of the agency
8 when you try to do both of those things.

9 PRESIDING MEMBER GEESMAN: Doesn't that
10 come up in electricity, as well, though?

11 MR. JOSEPH: Yes, it does. Yes, it
12 does. And, frankly, it comes up at the Air
13 District when you're talking about, you know, to
14 harken back, the CARB2 projects. The Air
15 Districts were major proponents of those because
16 it went a long way to meeting their mission of
17 clean air. It's a problem.

18 Just to conclude, I think the focus is
19 where you have already put much of your focus, and
20 that is really reducing demand in an aggressive
21 way, to the greatest extent that the state can do
22 without the help of the federal government.

23 Thank you.

24 PRESIDING MEMBER GEESMAN: Marc, the
25 original consultant report that got us headed into

1 this subject matter by ICF, as I recall, focused
2 on storage, to a lesser extent pipelines and
3 maritime facilities, but principally on storage.

4 And at the time, this goes back to 2002,
5 2003, there was a great deal of discussion about
6 encouraging third-party storage. Storage not
7 associated necessarily with the major refiners.

8 And ICF identified some fairly severe
9 permitting issues there, mostly in a process way.
10 The ad seriatim review, as opposed to a
11 consolidated forum. And each individual permit
12 being subject to individual court challenge. And
13 expressed a high level of concern that if, in
14 fact, the state were interested in promoting
15 additional storage and in particular storage
16 perhaps unaffiliated with the major refiners, that
17 something should be done to rationalize the
18 permitting process more.

19 Your comments, and I think you said your
20 experience, have been primarily on the inside-the-
21 fenceline refinery improvement projects. But do
22 you have any view on storage facilities, and in
23 particular, third-party storage?

24 MR. JOSEPH: I think increase in storage
25 is, you know, clearly a good idea. The lack of

1 storage is the single most dominant features of
2 electricity and why we have the problems. And so
3 having storage, more storage is certainly a good
4 thing from a statewide perspective.

5 I think that you're going to have
6 trouble creating more storage in the L.A. Basin.
7 You know, it's densely populated. I think you
8 could, if there were a way for the state to
9 encourage more storage in places like, you know,
10 the Kern County oilfields, which are very under-
11 populated, that might be a good thing to do.
12 There is clearly, you know, an infrastructure
13 there which would be amenable to it.

14 But, you know, frankly, more storage in
15 heavily populated areas should have to jump
16 through a lot of hoops; that's appropriate.

17 Thank you.

18 PRESIDING MEMBER GEESMAN: Thanks very
19 much. Wanna Wright.

20 MS. WRIGHT: Good afternoon. My name is
21 Wanna Wright, and I'm up here wearing two hats.
22 Number one, I'm a mother, grandmother and a month
23 ago, a great grandmother. And they all live in
24 Richmond.

25 I happen to work for CBE but I'll tell

1 you why I work for CBE. I'm a 25-year breast
2 cancer survivor. The past 24 years I've worked
3 with women in west Contra Costa County. And in
4 the last year, nine women under the age of 50 died
5 of breast cancer that I was individually working
6 with.

7 And so instead of just trying to get
8 women to go get mammograms, I decided I needed to
9 do something different to try and find out some of
10 the whys. And I still don't know all of the whys,
11 but I hear the cries and I cry the cries.

12 And I firmly believe that pollution, and
13 since some of the refineries are some of the
14 biggest polluters, are causing cancer and asthma
15 in my community.

16 As a community organizer I talk to
17 people every day. And whether you believe it or
18 not, they believe that pollution is causing this
19 problem. They believe that there's racism going
20 on. They believe that a lot of people who
21 regulate don't live in the communities.

22 Now yesterday morning at church I was
23 sitting next to Irma Anderson, who's the Mayor,
24 and Mandel Penn, who's on the Council. Now, I
25 talked to both of them about a woman who died a

1 few days before. I had some access. It might not
2 do any good, but it made me feel like I had some
3 access, like I could talk to these people to say I
4 need something done, we need something done.

5 I don't know where you live, but I don't
6 believe any of you live in the City of Richmond or
7 in the City of Rodeo. And we don't have access.
8 And if you can do a better job than the cities,
9 then the federal government ought to be able to do
10 a better job than you. But then that just removes
11 it even more from the community. And it just
12 gives people a sense of well being.

13 So if you think you can help the cities,
14 find a way to help them without taking the power
15 away. Because at least if they make a bad
16 decision we can go to CBE's lawyers or some other
17 lawyers and say, take this to court.

18 The one understanding I have is that we
19 don't have any legal recourse except the Supreme
20 Court. And the Supreme Court may not listen to
21 us. And if you're involved with policy, and I can
22 understand that, because I drive a car and, you
23 know, I know I use other products, but give some
24 resources to the city, give some staff, give them
25 some money to help them. But you don't have to

1 take the power away from them to help them.

2 And we need to reassure these people who
3 live right next door to these refineries that
4 there are people who care about them and their
5 needs, in addition to the needs of the -- because
6 a lot of these people don't have cars, and they
7 don't even know that they use oil products, a lot
8 of oil products. So that's for somebody else,
9 that's not for them. So you're asking them to
10 suffer the consequences for somebody else.

11 And so I'd just ask you to find another
12 way to help the cities without taking the power
13 away from them. Because if you take it away from
14 them, the people perceive it as you're taking it
15 away from them.

16 PRESIDING MEMBER GEESMAN: Thank you,
17 ma'am.

18 COMMISSIONER BOYD: Thank you.

19 PRESIDING MEMBER GEESMAN: That's all
20 the blue cards I have.

21 MR. ROSTOV: Good morning, or afternoon.
22 Excuse my jacket, it's very cold in here. Just
23 getting over an illness.

24 My name's Will Rostov and I'm with
25 Communities for a Better Environment. I think

1 Greg Karras and Wanna Wright really made our
2 argument on the facts. And I just wanted to
3 follow up with one political point and keep my
4 comments very short.

5 But before that I have one process
6 point. Although we appreciate that this hearing
7 is being held in the Bay Area rather than in
8 Sacramento I do want to note that there was no
9 coordination about the date this hearing was going
10 to occur on. We were told about the date, but we
11 had no opportunity to have an influence on when
12 the date would be. So, there's three or four of
13 us here, but this date was not good for us. And
14 if there was more coordination with the local
15 community I think there would have been a lot more
16 people here.

17 But my point goes to something that Marc
18 Joseph mentioned about how there seems to be a
19 conflict between the policymaking authority of the
20 CEC and then their desire to also do the
21 permitting.

22 I've sat through about three of these
23 workshops now. And it seems to me the CEC
24 Commissioners have an agenda to streamline the
25 process, to do one-stop permitting. This agenda

1 is similar to the Western States Petroleum
2 Association agenda.

3 This hearing is purportedly about fact-
4 finding, but I think that rings hollow. There is
5 a power grab going on here, no pun intended. The
6 CEC has no expertise with refineries, but they
7 want to now do refinery permitting.

8 At the same time the Western States
9 Petroleum Association doesn't like the current
10 system, and they are forum shopping for a better
11 place where they feel like they could have -- get
12 rid of environmental regulations. Not get rid of
13 them, but streamline them, just like the CEC.

14 And the CEC, at the same time, is
15 pushing this forum shopping. And the CEC is
16 pushing this forum shopping while one of its
17 Commissioners is married to a lobbyist for the
18 Western States Petroleum Association.

19 I want to refer to an article from the
20 "L.A. Weekly". I think it's from last year, but
21 it's on your website attached to one of our
22 letters. And the article is called, "The Well
23 Oiled Deal. Taking away local control over
24 refineries is a family matter."

25 And in that article about one-stop

1 permitting Commissioner Boyd, who is sitting here,
2 says, and this is quoted, you can correct me if
3 I'm wrong -- or if this article is wrong, it says,
4 "I've built a firewall between myself and that
5 proposal" meaning the one-stop permitting. "I'm
6 basically not participating in that proceeding."

7 But today you are participating. And
8 I'm really surprised that there's no conflict of
9 interest rule at the CEC that covers this. But
10 the appearance of the conflict is shocking. And I
11 believe it's shameful that the CEC appears to have
12 this conflict, or, in fact, does, and they're
13 using the taxpayers' money to push the oil
14 industry's agenda.

15 That's my comment.

16 PRESIDING MEMBER GEESMAN: Thank you,
17 Mr. Rostov. As somebody who's been an attorney
18 for I think 28 years now, I rarely feel bad about
19 being an attorney. But I will say measured solely
20 on effectiveness of your presentation, I'd say I
21 feel bad about being an attorney today. I think
22 you can do better than that. I think you've done
23 better than that in our forum before. And I'd
24 encourage you, the next time you come before us,
25 to focus more on the substance of what's in front

1 of us, rather than ad hominem personal attacks.

2 MR. ROSTOV: Well, I would just like to
3 say that I believe Mr. Karras and Ms. Wright did a
4 good job for us today.

5 PRESIDING MEMBER GEESMAN: They did.

6 MR. ROSTOV: Thank you.

7 PRESIDING MEMBER GEESMAN: Thank you. I
8 understand that Katherine Kutsuris, the Planning
9 Director of Contra Costa County is hoping to be
10 here at 12:45. Why don't we take, of all people,
11 the Western States Petroleum Association next.
12 Mr. Sparano.

13 DR. TOOKER: Commissioner Geesman, we
14 seem to be having a problem with feedback when we
15 turn the computer on. And I don't know if Joe
16 needs the PowerPoint -- he has a PowerPoint
17 presentation, but I talked with the staff here
18 this morning. We don't seem to be able to
19 eliminate the feedback problem.

20 PRESIDING MEMBER GEESMAN: Well, I think
21 we can probably just go through it manually.

22 MR. SPARANO: I'd rather have the
23 PowerPoint.

24 (Pause.)

25 MR. SPARANO: With the Commissioners'

1 permission, I would rather face you than --

2 PRESIDING MEMBER GEESMAN: Okay. Okay.

3 DR. TOOKER: Well, I can set this up and
4 we can put your PowerPoint in, Joe. It's --

5 MR. SPARANO: Yeah, put it in, and if it
6 makes too much noise, then we'll take it off.

7 (Pause.)

8 MR. SPARANO: First of all I want to say
9 thank you to the Commissioners for being here, for
10 taking the time to continue to address what is a
11 very difficult and clearly emotional and
12 politicized issue. I want to say thank you to the
13 members of the community for being here. I think
14 it's important that all points of view are heard;
15 that none is put down; and that maybe we can all
16 understand one another better if we would listen
17 to all of the things that are being said.

18 While Chris is working on that let me
19 mention for those of you who are not aware that
20 WSPA is the Western States Petroleum Association.
21 We represent and advocate for 26 companies that
22 are involved in exploration for production
23 refining, transportation and marketing of
24 petroleum and petroleum products in six western
25 states. Certainly that includes California, but

1 also Oregon, Washington, Nevada, Arizona and
2 Hawaii.

3 And we also have members who produce a
4 significant amount of natural gas from inside
5 California borders, albeit less than they could,
6 given the current strictures on production and gas
7 quality that I believe is the subject of another
8 workshop starting on Thursday to address that
9 issue. And that, too, is a part of the overall
10 infrastructure issue.

11 And while there's no PowerPoint there,
12 and maybe there never will be one, but that's
13 okay, I think one of the things that's really
14 important that many of the speakers have touched
15 upon but no one has, I think, pulled it all
16 together, the issues we're talking about today
17 didn't start with the advent of the 2003 IEPR.

18 The failure of our state and our federal
19 government to have a full-scale and cogent energy
20 policy and plan is one, a failure for which we're
21 all responsible, everybody in the room, including
22 our elected officials.

23 We have very little mass transit to
24 speak of. I think it's an issue that came up
25 briefly. And certainly if there is a notion that

1 all of us should drive our cars less in the spirit
2 of emission control, it would be great for people
3 to have an alternative.

4 One of the reasons that there is an
5 outcry and I get to face the brunt of it on tv and
6 radio and with newspaper interviews when there is
7 a price spike, is that there's a huge frustration
8 that the people don't have an alternative. And I
9 think some of the comments made today about
10 alternatives are very well taken. And I'll try to
11 address those.

12 Next slide, please. What I'd like to do
13 today is to share the industry's perspective with
14 you on what I think are several important issues.
15 Certainly we're here to focus on petroleum
16 infrastructure, but it's not just petroleum
17 infrastructure. It's the energy infrastructure
18 for the State of California.

19 The infrastructure, itself, is
20 undersized for the growing demand for all of the
21 energy products that you use and that I use.
22 Looking at the constraints is important.
23 Commissioner Geesman focused on storage a minute
24 ago. Many of you have focused on refining. We
25 talked about pipeline systems. It's a very vast

1 and complicated set of assets which require
2 investments to make our economy run.

3 Determining what the improvements are in
4 the permitting process. Whether you agree or not
5 that the permitting process is sound the way it's
6 structured, I think the process, itself, while
7 based in a terrific law, CEQA, has had some flaws.

8 And Commissioner Geesman and
9 Commissioner Boyd I think each mentioned ICF,
10 their consultant, who did a terrific job in 2003
11 to identify those areas where the process has some
12 flaws and where it could be worked. And I believe
13 there are some recommendations outstanding that
14 might be worked as a result of the process that
15 we're all going through today, and that some of us
16 went through on the 27th in the South Coast area.

17 And finally, we need to look at the
18 current infrastructure, not just future
19 infrastructure, but that existing infrastructure
20 where the infrastructure needs improvement and how
21 we can develop best practices that will honor
22 everybody's views of what's important to be
23 addressed as we go through this process.

24 But clearly, this is a big picture
25 issue. It takes a combination of all of the areas

1 that all of you have talked about today.

2 Petroleum, how much should we use; is it running
3 out; how long will we have it.

4 Alternative fuels, how quickly can we
5 develop them. Better infrastructure for all forms
6 of energy. More mass transit. Increased
7 efficiency, automobile engine efficiency is an
8 area where the CEC has some specific
9 recommendations which our industry has not
10 objected to at all.

11 And finally, greater conservation.
12 Those programs work. You can't add supply through
13 conservation, but certainly can reduce the amount
14 of decline of a supply form by using it wisely.
15 And the Governor actually has a good program that
16 was instituted last year, Flex-Your-Power at the
17 pump, that includes a number of conservation tips
18 from as simple as putting enough air in your tires
19 to not gunning the engine like a teenager every
20 time any of us leaves a light with someone next to
21 us.

22 That's a little bit of an attempt at
23 humor there, but it's a fact that those types of
24 actions, failure to put air in tires, driving too
25 fast, accelerating, all use more than we might

1 otherwise use. And all of that stuff -- my point
2 here is all of it contributes to why we're sitting
3 here today.

4 I want to make this clear. There's no
5 confusion in my mind; no confusion in the
6 industry. There may still be some confusion in
7 this room and with the public, and if there is,
8 then it's our fault, our industry's fault for not
9 clearing it up.

10 We're not trying to usurp the authority
11 of local government. We're not trying to
12 undermine the process. We simply believe honestly
13 and sincerely that the permitting process is
14 flawed and needs some improvement.

15 We don't want to walk away from it. I
16 said to you earlier I think CEQA is a fine law; it
17 needs to be executed better. But I think this is
18 a task for all stakeholders, and I think
19 Commissioner Geesman made it very clear that there
20 isn't even a proposal on the table. This is not a
21 power grab. This is a search for information that
22 might lead us to a better place.

23 I don't want to weaken CEQA; the
24 industry doesn't want to weaken CEQA. However,
25 it's clear that there are instances where that

1 process has been used to retard progress of the
2 growth of infrastructure.

3 I'll just give you a couple of examples
4 in the South Coast that stand out for me. And we
5 can debate the reasons, but the fact is one of our
6 members, Conoco Phillips, has proposed an ultralow
7 sulfur diesel project that I believe is now tied
8 up in litigation. The reasons, whatever they may
9 be, and I don't know them specifically, are less
10 important than the fact that here is an
11 opportunity to have cleaner fuel and therefore
12 further clean air. And that's being delayed
13 because of litigation tied to the process.

14 Kinder-Morgan similarly would like to
15 expand a terminal. And that has run into great
16 community opposition. And maybe at the end of the
17 day the community opposition will be right. I'm
18 not sitting here acting like I know that the
19 answer will be wrong. But the process does have
20 some built-in delays associated with it, and that
21 causes all of us to scratch our heads when we see
22 the result of that, which is insufficient supply
23 to meet growing demand; and an inability to get
24 that supply from where it is available, be it a
25 refinery or a shipment at dock from a -- hauling

1 products or crude from a foreign country to get
2 into our system.

3 Please go back. Just the last item
4 here, I want to make it clear that this is not
5 some attempt to backslide on environmental
6 protection. The first time I uttered the words
7 permit streamlining Commissioner Geesman, to his
8 credit, jumped all over me -- I had to step back
9 from the mike -- with his assertion, quite
10 correctly, that this is -- permit streamlining
11 doesn't mean don't clean up the air, doesn't mean
12 go backwards on what you've already achieved.

13 I think one of the speakers mentioned
14 just how much money has been spent in an effort to
15 improve just the fuel specifications and the fuel
16 quality in this state. There's been a lot of
17 effort made. We're not looking to undo that.

18 But balance is important, it's really
19 important. It can't just be do things a certain
20 way to serve a certain ideology and to heck with
21 having enough supply. This isn't an economy that
22 moves on walking. It moves on the ability to
23 transport goods and services around the state.
24 And to undermine that causes all of us a problem.

25 And I urge you, if you aren't already

1 bored by them, to take a look at the words on the
2 slide, because I'm not going to read every one of
3 them. That would be an insult to you, but I hope
4 we have some information up there that if you care
5 to focus on it, you'll find it may be of some
6 interest.

7 What do we and don't we support. A
8 balanced energy policy for the state, absolutely
9 critical. I don't think we have one now. And I
10 think it's important that we get there for all of
11 us, and for our offspring.

12 We do take issue with the Energy
13 Commission on their IEPR in one of the few areas
14 where, for the most part, we support a remarkably
15 good document. Good in the sense of public
16 service and the CEC working to discharge its
17 responsibilities to figure out ways to make sure
18 that each of us in California has access to the
19 secure supply of affordable energy. That's what
20 this is all about.

21 I don't think taking away demand, and
22 therefore supply, is a way to incentivize folks to
23 create more supply. It just doesn't work that
24 way. However, doubling the CAFE standards, not
25 against that. Adding 20 percent alternative fuels

1 by 2020 and 30 percent by 2030, I have to tell you
2 that our members, members of WSPA, because they
3 understand that they have to evolve just like all
4 of us do, are heavily invested in research and
5 development for alternative fuels. I'll mention a
6 couple, hydrogen fuel cells, gas-to-liquids
7 technology, which results in taking natural gas
8 and turning it into ultraclean diesel.

9 Those things are at work. Whether or
10 not you have the opportunity or the interest to
11 focus on them is not up to me. However, the facts
12 are that that activity is underway. So we
13 certainly support ways to increase supplies and to
14 promote an even more diversified energy portfolio.

15 The question posed is are we heading for
16 a petroleum infrastructure emergency. I think
17 it's possible. Like someone said, nobody has a
18 crystal ball. I sure don't. But I think if you
19 look at some of the elements here, and first of
20 all we do pay higher prices than the national
21 average for gasoline and diesel. And there are
22 reasons.

23 I want to give credit to Marc Joseph for
24 identifying a couple of those. Fuel island. Fuel
25 specs, in particular, but not at the exception of

1 just the investment climate in this state and the
2 amount of investment it takes to keep up with
3 demand. We don't have adequate capacity and
4 supply, and we do have rapidly growing demand. We
5 don't have adequate mass transit, and that's a
6 public policy issue. I agree with Mr. Karras,
7 that needs a lot of work.

8 We do expect an increase in demand and
9 to just build on a figure Commissioner Geesman
10 used at the beginning, we have 36 million people
11 now, headed for 50 million in 2030. We have 23
12 million autos registered now. Just using simple
13 math and interpolation, that suggests that by 2030
14 we'll need 34 million or we'll have 34 million or
15 more automobiles. That's not going to stop for
16 all the desire of some to predict the end of
17 petroleum and getting rid of petroleum. There's a
18 bridge that needs to be built and kept there in
19 order for our economy to keep moving. And that's
20 the balance I'm talking about that's absolutely
21 critical. And if we have a permit system that
22 supports that we will be in better shape than if
23 we don't.

24 There are constraints. These are not my
25 words, these have been identified clearly by the

1 Energy Commission in their IEPR and by the
2 Governor's California Performance Review. This is
3 not just one dimensional, some view of the Energy
4 Commission for some self-serving purpose. Not
5 hardly.

6 There are a lot of people in this state
7 who are beginning to realize that the
8 infrastructure and the permit process are elements
9 of the problem we face in matching up supply with
10 the demand that is ever growing.

11 We get lots of questions about market
12 volatility, not so much here, although profit
13 margins were mentioned. Factually they're in line
14 with other industries. And I urge you to look at
15 "Business Week" to determine that from a
16 relatively reputable third party. And I've showed
17 some numbers there that reflect what the actual
18 statistics are.

19 And I won't read them to you, but I will
20 observe someone said something about tight
21 supplies and preferences of suppliers. I think
22 it's important that the way in which energy
23 companies generate their huge revenues is to sell
24 as much product as possible. And that is a
25 watchword in the industry, maximize production.

1 And I think when that production is
2 frustrated by external forces, they have to be
3 addressed.

4 What do we have now, the industry
5 situation. There are geographic barriers and fuel
6 quality issues that are fundamental to California.
7 We have no pipelines coming in from the east. The
8 Rocky Mountains are a geographic barrier; the
9 Pacific is a very wide geographic time delay for
10 any products and crude to get into our state.

11 The fuel specs are tougher than anywhere
12 in the country. I'm glad. The statistics show
13 that those tougher fuel specs, Jim Boyd being, I
14 think, in large part responsible for the fact that
15 we had a CARB2 that required those specs to be
16 met, has been helpful to all of us.

17 But we are a fuel island, and that is
18 just fundamental to the challenge we face in
19 supplying products all the time regardless of the
20 state of equipment, regardless of whether there
21 are turn-arounds where equipment is out of
22 service, whether there are situations and
23 incidents that take equipment offline. We cannot
24 simply call up and say we'd like a boatload here
25 tomorrow. Doesn't work that way.

1 Closest point that supplies and forming
2 fuel is the State of Washington. Seven or eight
3 day trip, more when you consider blending the
4 products. The Gulf of Mexico which has ample
5 over-supply, same industry, takes 14 days once
6 someone decides that they can make and want to
7 make the products that we need. And across the
8 Pacific it's a 30- to 40-day voyage from refining
9 centers that can produce the products that we use.

10 So internal infrastructure is critical.
11 If we want to work our way out of the challenges
12 we face today, fixing our own infrastructure and
13 the elements that affect how well we use it and
14 how substantial it is to meet our needs is an
15 internal California problem that we're going to
16 have to solve by working together.

17 This is one of my favorite slides. Is
18 there another button you can push? No? I guess
19 not. Well, I'll describe what's on that slide --
20 there we go. You're getting there. There's
21 another one.

22 UNIDENTIFIED SPEAKER: I'm building it
23 as we go, sorry.

24 (Laughter.)

25 MR. SPARANO: I feel like I should be

1 doing my animal imitations with the lack of the
2 slide coming up, but I appreciate your effort.

3 UNIDENTIFIED SPEAKER: Is it almost
4 there?

5 MR. SPARANO: No, you got it, that's
6 great. Apologies to the audience for having to
7 sit through that. And since it's making noise
8 I'll be quick about this.

9 The main points, and you can't see it on
10 the left, but there's a list of 34 refineries that
11 existed in 1980. Marc Joseph, I think, said it --
12 I think it was Marc that said those refineries got
13 permits because they needed to get permits to make
14 cleaner gasoline. Many of the smaller, under-
15 capitalized plants went out of business.

16 And as a result, if you look on the
17 right you'll see that we have 13 now. The good
18 news for the state is that there's a 13th,
19 Paramount Petroleum in Paramount, California that
20 is now on the verge of or has just started making
21 CARB gasoline and diesel; about 10,000 barrels a
22 day according to what I have heard about their
23 project of gasoline. Unfortunately that's just
24 about 1 percent. Not a whole lot, but it's more
25 than zero and it's certainly not a move in the

1 wrong direction. So, that was the result of
2 obtaining permits and getting the construction
3 underway, and apparently completed in good order.

4 What you do see on the right-hand part
5 of the chart, and then I'll leave it alone, the
6 red diamonds reflect demand, ever growing,
7 continuing to grow, according to the Energy
8 Commission 1 to 2 percent per year of gasoline or
9 more. I think it was more in '03 and '04.

10 The blue line is refinery capacity that
11 has dropped from almost 21 billion gallons of
12 gasoline a year of gasoline down to 16, which, by
13 the way, is about what the demand is, as you can
14 see. And finally, the green line represents the
15 amount of CARB gasoline, on-spec, conforming
16 gasoline that these existing refineries can
17 product.

18 And guess what, if you compare the red
19 curve and the green curve, that gap you see is a
20 problem. That is how much we need to import every
21 single day to meet demand.

22 Thank you.

23 UNIDENTIFIED SPEAKER: You're welcome.

24 MR. SPARANO: Why should we all care
25 about infrastructure? We've got some facts here

1 that I won't belabor, but we use a lot of
2 gasoline, we use a lot of diesel fuel, we use a
3 lot of jet fuel and it's not coincidence that that
4 helps make us the fifth largest economy in the
5 world, as Commissioner Boyd mentioned earlier.

6 That's a good deal. I think I'd much
7 rather have a large healthy economy than one going
8 in the wrong direction.

9 We produce a lot of oil here, albeit on
10 a substantial decline from what it used to be. We
11 have a lot of choices for consumers there, 9500
12 service stations. And to be factual, there are
13 more in some places than others. And I think you
14 see a result of that occasionally in terms of
15 competition, the competitive activity. There are
16 2500 stations in L.A. and 700 in San Diego, and
17 130 in San Francisco.

18 I was in San Francisco last week at
19 night. Took me a half hour with an empty tank to
20 find a place to fill up. And my associate who was
21 with me at the time said, see, you proved your own
22 point. And I'm only glad that I proved it before
23 I ran out of gas. But that's a significant
24 challenge.

25 However, there is a vast network to help

1 us meet that challenge. We have pipelines, lost
2 of berths to secure vessels that are bringing in
3 material and are taking out shipments of our
4 products. The distribution system is
5 extraordinary, and yet all of that is not
6 sufficient to meet growing demand.

7 Some additional facts, and these are
8 California and specific to the Bay Area in some
9 sense. The industry provides a lot of jobs. It
10 is a mover of the economy. In the Bay Area we're
11 looking at some 50,000 jobs. There's a huge
12 payroll and a lot of contribution to gross
13 product, and a significant amount of taxes that
14 are paid each year by this industry.

15 And one of the most important points
16 that we don't advertise as much as we should, that
17 there is an economic multiplier. And what that
18 says is that for each job that exists in the
19 petroleum industry there are three jobs created
20 indirectly that support that industry. And that
21 ranges from someone who cleans heat exchangers to
22 additional check-out people at your local
23 supermarket or a new dry cleaners to support
24 influx of folks when there's an increase in
25 capacity that adds to the staff of the local

1 plant.

2 I'd love to say when there's a new plant
3 it really takes off, but we haven't had one since
4 1969, so I can't really quote that.

5 There have been some comments about
6 environmental performance, about safety issues.
7 Here are some facts. And I don't ask you to
8 change your opinions in any way, shape or form. I
9 just ask you to focus on the facts.

10 A lot of money has gone into improving
11 the quality of fuels and the quality of the
12 equipment that makes the fuels at our refineries
13 in California. And in the production system, as
14 well.

15 Emissions have been reduced a billion
16 pounds a year. It's the same as taking 3.5
17 million cars a day off the road. We have spent a
18 lot of money to eliminate MTBE from the system.
19 And clean diesel gets cleaner and cleaner all the
20 time. We're in the process now of going to
21 ultralow sulfur diesel which will contain a
22 maximum of 16 parts per million of diesel when it
23 goes into a tank to fuel our ever-improving
24 technologies in diesel engines, all of which is
25 good, not bad, but good for the environment.

1 Air quality statistically, according to
2 state records and based on ozone standards, is
3 good, twice as good as it was. And the Bay Area
4 has seen a reduction in reactive organic gas
5 emissions of over 75 percent. You are in
6 attainment in this area against the federal one-
7 hour standard and expected to and hopefully will
8 meet the more stringent eight-hour standard soon.

9 The industry safety record is a good
10 one, statistically better than just about any
11 other industry you can name. Light years better
12 than the performance of all private industry and
13 public and private industry combined. There's a
14 huge emphasis on safety.

15 And let me tell you a simple and un-
16 altruistic reason for that. You do not, if you
17 own a plant, if you invest money in the plant, if
18 you care about the people who work for you and the
19 communities around you, the last thing you want is
20 sloppy operations that lead to a problem. They
21 are costly, they're embarrassing, they're annoying
22 and they can create damage. We're all against all
23 of that. And I think the safety record is one
24 indicator I believe directionally shows that there
25 has been a lot of progress and that the results

1 are good ones in the area of safety.

2 There were a few comments about the
3 industry looking to change the process for its own
4 advantage and to do something that would undermine
5 the good of others. That is not the case at all.
6 We have had some capacity increases; we still lag;
7 demand increases by a significant amount.

8 We need to keep pace with the state's
9 demand for energy. The statistics that were
10 mentioned earlier by Commissioner Geesman and
11 reinforced by me a few minutes ago are real. The
12 state continues to grow in population; people use
13 energy products; we need to have a straightforward
14 system that honors local communities' interest,
15 the people in those communities that uses
16 community input as part of the process.

17 But it needs to be smoother. It can be
18 smoother. I think the CEC has a terrific document
19 that they could share that would identify very
20 specifically some of the areas where problems
21 exist and could be remedied.

22 But we're not going to do it by throwing
23 stones at one another, I assure you that. That is
24 the last path to success.

25 A streamlined process will not just

1 affect new facilities, whatever they may be, and
2 they will more likely be infrastructure,
3 pipelines, storage tanks, docks, delivery systems,
4 distribution systems rather than refineries.

5 Someone mentioned earlier that industry
6 blames no new refineries and not much new capacity
7 on the permit system. There is a very specific
8 set of reasons for the lack of additional
9 refineries in California and in the U.S. And
10 there are three main ones.

11 The first is people don't want more
12 refineries or new refineries in their backyards.
13 And that's a tough one. Somebody mentioned
14 storage and why can't we put more storage tanks
15 somewhere where they're not a nuisance to anyone.

16 Well, you put a storage tank where the
17 market is. And the market is where the people
18 are. That's a tough fact, but it's real. If you
19 put a storage tank way out somewhere then you have
20 to build a pipeline to get the product to it and
21 back to market. Those are the realities of the
22 business. And they're substantial in nature when
23 it comes to investment.

24 If I ran a company and went to my board
25 of directors and shareholders and said I'd like to

1 build you a new refinery because I think it's a
2 good economic investment, if I wanted to build on
3 that is on the small side of average of
4 California's 13 plants, it would cost \$2 to \$3
5 billion to build a 100,000 barrel-a-day plant.
6 All that with the uncertainty that the permit
7 process would allow me to deliver the permits.

8 Even though, as Marc Joseph said, over
9 the course of CARB2 and the \$5 billion of
10 investment that went into creating cleaner
11 products, eventually those facilities were built,
12 for the most part, unfortunately, the casualties
13 were 20 refineries. And there is a direct link in
14 many cases between the process, the cost and the
15 fact that those refineries no longer exist. And
16 the people who worked there don't have jobs. And
17 I personally laid off 220 people for that reason.

18 So, it's not some ethereal concept of
19 what happens when people go out of business. It's
20 real; it hurts; and it affects people in the
21 communities where you live.

22 One final point. There is no one single
23 permitting issue that's a problem. It is the
24 combination of the permitting system, the fact
25 that we don't have mass transit, all the things I

1 mentioned earlier.

2 California has made some very discrete
3 public policy decisions that we, as citizens, have
4 allowed and, in some cases, supported by virtue of
5 who we've elected and how we've supported them.
6 We don't have additional offshore drilling. And
7 whatever you believe about offshore drilling in
8 terms of its cleanliness contribution or not to
9 the environment, there is a significant amount of
10 natural resources offshore.

11 We've elected, as a society, and it's
12 okay, to not drill new leases, period. We have
13 elected apparently not to put a lot of money into
14 mass transit such that we can move and use it as
15 an alternative. Those are decisions that are
16 okay, but there are, in some cases, intended and
17 unintended consequences. And one of them is we
18 are rapidly exceeding the amount that we can
19 provide to meet the growing demand.

20 A lot of things have gone right in the
21 permit system. As was mentioned, projects were
22 approved. They did take a long time, from one
23 year to five years. We've got some really good
24 things going on in Air Districts, accelerated
25 permitting process and priority permit processing

1 are good options that move us in the right
2 direction.

3 There are permit streamlining task
4 forces that are getting back in business. All
5 with the objective of improving the timeline and
6 improving the quality of permit decisions so that
7 equipment can be installed.

8 I do want to mention that with respect
9 to dredging that there were, in fact, significant
10 time delays associated with obtaining dredging
11 permits. That got worked to the credit of BCDC,
12 that got worked and it got worked hard. And I
13 think now what you heard this morning reflects the
14 improvements that have been made. But that was an
15 area where there wasn't an apparent link between
16 how long it takes to issue a permit to bring in
17 crude or take out products at a dock where
18 dredging is required, and without it vessels
19 either can't come in or would have to go to
20 another location. That has an energy supply
21 implication. That's connecting the dots. I think
22 we're doing a better job of it now.

23 There are four areas we think could be
24 improved. The timelines we've talked about.
25 There are lots of things that affect timelines in

1 California. While there is a federal title 5, I
2 think it does nothing more than act as a
3 redundancy to what we've already done in
4 California. We have some very stringent
5 requirements; more stringent than anywhere on
6 earth. And we have duplicated some of those to
7 the effect that the timeline gets dragged out.

8 Data requests, from our perspective, and
9 please appreciate I'm certainly advocating
10 industry's view here, and there are those of you
11 who may not agree, but so be it. We think the
12 data requirements are often excessive. Mitigation
13 requests, which translate into dollars, are often
14 significant. And we believe out of line with what
15 the project purports to do, which in some cases is
16 to make the air or water cleaner faster.

17 And permit conditions that are applied.
18 We are on record as taking issue with those in
19 many cases, and working toward trying to come up
20 with a constructive solution.

21 But we think those are the areas that
22 need to be worked and we think the CEC can play an
23 important role in connecting the dots between what
24 you all allow and accept in your areas where you
25 live, and what's required for sufficient energy in

1 this state. Those are the dots that up to now are
2 not being connected well.

3 And having the CEC, with its wealth of
4 energy expertise and mandate to make sure that we
5 have an affordable supply of energy that's readily
6 available, that's a good connection there. It
7 doesn't mean taking away the franchise of local
8 groups to do their jobs. And I don't think I've
9 heard anybody at the CEC say that in all the times
10 I've been before them and have testified.

11 We'll go through this quickly and I'll
12 finish. We do have some issues we tried to
13 outline. We had a third party take a look oat a
14 number of our members' activities ranging from
15 refinery operations through marine storage
16 terminals and just showing the type of issue we've
17 been confronted with, and the category that has
18 been at issue.

19 I affectionately call this my laundry
20 list. But they do represent actual examples,
21 again collected by a third party, that reflect
22 what's happened to cause project delays or even
23 project cancellation.

24 There is a permitting bureaucracy, and
25 it can be inefficient, because it is local,

1 regional, state and federal. Everybody can have
2 an influence over the permit process. Not all in
3 every permit, but there are overlapping
4 jurisdictions and responsibilities.

5 The unpredictability in the City --
6 representative from the City of Benecia made a
7 comment about providing certainty on approval for
8 project development and implementation. That's a
9 good thing; it's absolutely critical to have more
10 and not less certainty.

11 Down toward the bottom you'll see a two-
12 word notation, flaring prohibition. Flaring is a
13 safety issue. We flare for safety reasons. There
14 is no routine flaring. It's absolutely absurd to
15 think that people will allow product to go up the
16 stack that is worth lots of money just in some
17 willy-nilly effort to operate poorly.

18 If there's an excess of gas that's a
19 process imbalance. If there's an over-pressure
20 situation that's a safety issue. Flare is the
21 remedy. And for the most part combusts almost to
22 100 percent.

23 We have issues with the Bay Area and
24 with the South Coast that we are working, working
25 collaboratively to develop flare rules and

1 procedures for minimization of flaring. In the
2 South Coast it's a test program to see if we can
3 jointly develop a rule. How novel. Industry and
4 the regulators working together to develop a rule
5 that works for everybody including the community.

6 But the numbers are improving
7 statistically. The amount of SOx from flares in
8 the South Coast is down more than tenfold in the
9 last few years. And that's the result of a
10 monitoring program instituted by the regulatory
11 body.

12 PRESIDING MEMBER GEESMAN: What was the
13 CUP review that you refer to there? You said
14 repetitive CUP reviews for facilities.

15 MR. SPARANO: The conditional use permit
16 issue, okay. I'm sorry, I should have
17 identified -- I wasn't going to talk about that so
18 I didn't identify it. But it's the process of
19 getting that conditional use permit and there are
20 a lot of public hearings, which are good, don't
21 get me wrong, public hearings are good. A
22 multitude of them, and as Commissioner Geesman
23 said earlier, using the process step by step,
24 adjudicating, going back with a new issue,
25 adjudicating again, going back with a new issue.

1 That is acutely time consuming and sometimes
2 defeats the purpose of having a project, because
3 it can't be installed in time. Or its economics
4 are sour because the investment climate that was
5 there is gone by the time a project permit might
6 be obtained.

7 These are some more of the list of
8 things that we think affect the permit process.
9 And I'll just let it stand there for a moment so
10 you can look at what they are. And unless there's
11 a question I won't comment on them further.

12 Okay, thank you. Next slide, please.
13 These are specific examples of projects that have
14 been impacted by the existing permit policy and
15 permit practices. I have these up here just to
16 illustrate the range of projects that are affected
17 and have been affected, in some cases negatively,
18 in terms of timely completion or completion at
19 all.

20 Some of these are purely for
21 specifications, to meet cleaner specs; gasoline
22 reformulation; refinery modernization. They --
23 renewal, NPDES renewal, those are all related to
24 permits and permit conditions and meeting them.

25 A comment was made earlier that I wanted

1 to address, and I failed to when I had it on the
2 page. The notion that buying crudes that have
3 more sulfur and other materials in them that are
4 nominally heavier and more sour crudes, and often
5 cheaper, the notion that they create more
6 emissions is wrong. Those crudes must come out in
7 products that meet the same standards, period.
8 That's a fact. There's no question about that.
9 We are not guided by what goes into the plant; we
10 are guided by what comes out of it, and that fact
11 that those products and emissions must meet all
12 the standards and permit requirements that exist
13 for whatever plant someone might have been
14 referring to.

15 PRESIDING MEMBER GEESMAN: What's FCCU
16 modernization?

17 MR. SPARANO: That's the fluid catalytic
18 cracking unit. And I put it there because if
19 you're familiar with refinery operations, a cat
20 cracker is the heart of the plant. It takes very
21 low quality, long chain molecules, and in the
22 presence of a catalyst and high temperature,
23 converts those long chain molecules into short
24 chain molecules that come out as gasoline and
25 diesel. And you get a volume expansion. Some cat

1 crackers that give you 12 percent across the cat
2 cracker; and of course, the entire refinery, that
3 can mean 3 percent or so expansion. And that's a
4 good thing. It's additional product output. So I
5 put it there, John, very specifically --
6 Commissioner Geesman, and thank you for mentioning
7 it.

8 Okay, a lot of conversation about what's
9 going on, what may be wrong, how can we fix it. I
10 think best permitting practices are important and
11 that we need a document that has some commonality
12 between local and state agencies. Consistent
13 policies, connect the dots is really important.

14 Making sure that we take into account
15 the energy supply implications of whatever we do
16 to grant or not to grant the permit application.

17 The last two arrows beneath that bullet,
18 no environmental backsliding, community
19 participation is important. I agree with Dr.
20 Clark when he said the community needs to have a
21 say. It's unquestionable. The fact that plants
22 and communities exist side-by-side is a fact, it's
23 there. To make things better needs a great deal
24 of dialogue, community advisory panels exist. I
25 know, I think I built the first one in Contra

1 Costa County in 1990 or '91 next door to Rodeo.
2 That's a good thing; people get to know one
3 another as people and not just as objects of
4 derision or dissatisfaction or misunderstanding.

5 So I wholeheartedly agree with your
6 comment about needing community input and not
7 walking by and not creating a system that takes
8 the community out of the process.

9 To the extent that there is more
10 statewide interaction, and in particular the
11 Energy Commission brings a vast body of knowledge
12 on energy supply and on ways to improve that
13 supply and keep it affordable, we don't want
14 efforts that duplicate one another. That just
15 causes time delays.

16 I think that if we could conduct a
17 statewide survey of permitting experiences and lay
18 that out for people, the specifics, I've given you
19 a little taste of it here, we've done some work.
20 We're willing to do more. It might be a good
21 collaborative effort.

22 The issue isn't the rules; it's not
23 CEQA. CEQA's okay. It's the consistency and
24 effectiveness with which the rules are applied.

25 ICF we've talked about. They did come

1 up with some really good suggestions on how to
2 streamline the process without impacting
3 negatively the environmental benefits that accrue
4 from having a CEQA process.

5 Finally, balance, balance, balance.

6 There needs to be balance between what happens on
7 permits and what happens in the marketplace.

8 Here's some things that we think need to
9 be addressed and established. I won't read them
10 to you. They're very easy to read. There are
11 seven of them. Best practices at the bottom, very
12 important. Fair criteria for mitigation measures,
13 very important.

14 I wouldn't have any fun unless I could
15 opine about the CEC's role in all of this. And
16 without humor, I think it's critical that the CEC
17 has a role in this process. They are the ones who
18 have the knowledge to clearly articulate not only
19 that there is a need, but what is needed in terms
20 of an energy infrastructure that balances
21 environmental concerns and needs with the needs of
22 the state to have an energy supply to allow the
23 economy to grow.

24 I think you're seeing evidence today of
25 the second bullet, proactively engage in

1 environmental regulation and policy debates. In
2 particular where there are issues that are focused
3 on environmental regulation and policy to the
4 exclusion of how capacity might be affected, or
5 reduced, or costs may be pushed unnecessarily
6 high. I think the CEC has a very important role
7 in that.

8 Perhaps most importantly and what I feel
9 is our industry's strong recommendation to the CEC
10 and to all of you who are interested in this
11 permit process, I think a state level facilitator
12 for energy infrastructure projects would be a
13 terrific addition to what we already have.

14 Best permitting practices to be
15 collected. Agencies could be encouraged to adopt
16 these practices more uniformly than we see them
17 today, which is not very uniformly at all. And
18 that a facilitator could get involved if there was
19 a situation where a project was about to be
20 delayed to discarded by the proponent, and maybe
21 having a facilitator to get the parties to come to
22 an agreement would be a good thing. And to
23 officialize that. I think there are elements of
24 that that exist now, but this is something that
25 we're suggesting to make more formal.

1 Finally, last slide, I promise. We do
2 advocate a streamlined permit. I won't beat
3 around that. That's not something I want to run
4 away from. We think it can be streamlined to the
5 benefit of everybody.

6 We want to plan and fund economically
7 attractive projects, and do it more efficiently
8 and with less uncertainty.

9 Production rates, we'd like to maximize
10 them, and we need to do it safely. And sometimes,
11 in order to maximize production rates beyond where
12 they are today, we have to use the word that
13 somebody used earlier, de-bottle-neck. That's a
14 good thing. That was you, Marc, I can see you
15 smiling. De-bottle-necking is a good thing. It
16 is what kept us closer in balance to meeting
17 demand than we would be otherwise, were it not for
18 de-bottle-necking that has occurred as part of
19 some of the environmental regulatory projects that
20 have been put in place by the industry.

21 Supply/demand balance is critical. By
22 working in the direction that many folks have
23 talked about today, I think the potential for
24 shortage-induced price spikes will be reduced.
25 More supply to match demand eliminates or

1 minimizes the situation that causes price spikes.
2 Fundamental economics.

3 And finally we're not stepping away from
4 our environmental responsibility. Never have, we
5 won't. And I put it there as the end line because
6 it's important that everybody realize that we're
7 serious about it. Whether you believe it, whether
8 you are comfortable with me saying it that way,
9 that those are the facts as I see them. And would
10 hope to communicate them to you for consideration,
11 Commissioners.

12 PRESIDING MEMBER GEESMAN: Thank you
13 very much, Mr. Sparano. Any questions for Joe?

14 COMMISSIONER PFANNENSTIEL: Let me just
15 ask one kind of a general question. Marc Joseph
16 would argue, I believe, that the permitting
17 process has not really affected the supply
18 situation. He said that it was not a --
19 permitting really wasn't the issue. And yet what
20 your laundry list, for example, gave us, at least
21 anecdotally, a number of places where you believe
22 it is.

23 Just qualitatively, is it really a big
24 issue? Is it really a big constraint on supply?

25 MR. SPARANO: Yes. And I think a good

1 example of that is what's not around anymore, 20
2 refineries. I know of one of them, because I ran
3 it, that didn't get by because it took five years
4 to get a permit.

5 And, yes, to be fair to Marc, we got the
6 permit. Five years was too long for the project
7 owners, for the company owners to envision a
8 future that they'd be faced with that over and
9 over again.

10 There are many other refineries that
11 couldn't stand the process and didn't even put
12 projects forward. There's been an observation
13 that there's a long list of permit applications.

14 Well, if you've been in an industry
15 that's had its permits delayed and has gone
16 through significant difficulties, you might ask
17 yourself twice how you're going to impact and
18 expose your shareholders by going forward with
19 more.

20 So I think it has been a real impact,
21 and the fact that there are two projects in L.A.
22 today delayed in the permit process, one of which
23 simply wants to make the cleanest diesel possible
24 that doesn't exist today. All those indicators
25 are out there.

1 COMMISSIONER PFANNENSTIEL: Thank you.

2 MR. SPARANO: Thank you, Commissioners,
3 for giving us the time.

4 PRESIDING MEMBER GEESMAN: Thank you,
5 Mr. Sparano. I'm told that Katherine Kutsuris,
6 the Planning Director for Contra Costa County, has
7 joined us.

8 MS. KUTSURIS: Good afternoon. I'm
9 sorry I didn't realize, and didn't know until a
10 couple hours ago that we were on your agenda. So,
11 I appreciate you taking my informal comments. As
12 I was sitting there listening, I was writing
13 notes.

14 I started with Contra Costa County in
15 1987 and was actually assigned my first project as
16 a land use planner with the refineries. So I was
17 the planner that was actually involved in the
18 permitting at the clean fuels projects. And so
19 have a fair amount of day-to-day experience, even
20 though I don't do that function currently.

21 And I would agree that there is permit
22 streamlining that can happen at all phases of a
23 permitting and a CEQA process. And I would agree
24 with the previous speaker that much of that has to
25 do with how individual public agencies manage the

1 work that's before them, and are they committed to
2 doing the job and maintaining the integrity of the
3 project.

4 In terms of -- I can speak for the
5 Contra Costa County Community Development
6 Department, we provide planning services to about
7 19 unincorporated communities in the County; and
8 we have three refineries in our jurisdiction and a
9 number of industry.

10 We are committed at our very core for
11 ongoing capital to be added to those refineries
12 and to the industry. We believe that if these
13 industrial businesses are continuing to improve
14 their facilities that that is good for our
15 community; it's good for business; it's good for
16 the environment. The fact that they continue to
17 put money into it. So we consider that one of our
18 operative policies to try to, as we're walking
19 through the permitting process.

20 I have seen, working with different
21 refineries, there are those that do better than
22 others, just as there are probably some land use
23 agencies and some public agencies that do better
24 than others.

25 There are, if you would like me to just

1 go over what I consider to be best practices over
2 the past 15, 20 years.

3 First of all, the partnership that
4 Contra Costa County has with the Bay Area Air
5 Quality Management District is invaluable from my
6 perspective. We don't just view them as a
7 responsible agency. They're actually an extension
8 of our staff, and I think we're an extension of
9 their staff. They are absolutely our partners
10 when we begin down the CEQA process.

11 We cannot wait until we have a public
12 document or until our consultant or our experts
13 have released a document to obtain their input.
14 We get them in from the very beginning. From
15 helping select a consultant, from looking at the
16 proposed review that the consultant is going to
17 do. And they're our partners every step of the
18 way, including sitting up with us at a public
19 hearing so that they can answer questions. They
20 have been invaluable.

21 I would also say that the Air Resources
22 Board, years ago I worked with Harold Holmes, and
23 I know they were quite interested in doing
24 whatever they could do to help local agencies move
25 through the permit process. And somehow they have

1 mastered the ability to be there when we need
2 them, yet not get in the way and slow us down,
3 which is quite a thing to say about another public
4 agency.

5 They were there with their expertise
6 whenever we had questions, they were there with
7 their engineers and other folks to answer them.
8 And I found them of great assistance through that
9 process.

10 The applicant, itself, not only -- as we
11 work with different industries you do find
12 varieties among them. And they may, from the top,
13 be committed to getting a project through, but the
14 commitment really needs to show in terms of are
15 they providing the people that can help answer our
16 questions, that can turn in a competent
17 application, that can be there to answer questions
18 and provide the data as we need it.

19 And some of those organizations are
20 better than others. I would say that they were
21 all fairly good, but there were certainly some
22 that really shined very well.

23 And it had to do with the number and the
24 quality of the folks that they actually put on
25 their end of the project, where we were really

1 getting the answers that we needed to get.

2 I know that there has been some
3 discussion about public involvement. In my
4 experience in Contra Costa County moves into
5 public hearing probably between 400 and 500
6 projects every year. So it is a fairly large
7 operation. Everything from very small to what
8 could be considered almost cities to industrial.

9 And the communication with your
10 neighbors cannot start when you file your
11 application. The communication needs to start far
12 before that. And those industries that have long-
13 established communication outside their gate did
14 better in public hearing than those that didn't.

15 COMMISSIONER GEESMAN: How many refinery
16 projects would you say that you go into public
17 hearing on in a year?

18 MS. KUTSURIS: Oh, not that many.
19 Probably one or two in a year. And with one
20 exception, I believe, Unocal and the clean fuels
21 project had, I think theirs were two public
22 hearings. They've all been approved in their
23 first public hearing.

24 PRESIDING MEMBER GEESMAN: Which are the
25 three refineries that come under your

1 jurisdiction?

2 MS. KUTSURIS: Well, I knew them as
3 Tosco, Unocal and Shell.

4 UNIDENTIFIED SPEAKER: They're now --

5 MS. KUTSURIS: They are now --

6 UNIDENTIFIED SPEAKER: -- Conoco
7 Phillips, --

8 MS. KUTSURIS: -- Tesoro and Shell.

9 UNIDENTIFIED SPEAKER: But don't hold
10 your breath.

11 MS. KUTSURIS: And in general, if I
12 would compare the quality of the industry
13 applications to those of other retail, commercial,
14 residential, it is no question a higher quality.
15 There's no question. I think the level of effort
16 that all of the refineries and the other
17 industries have put forth.

18 In addition to working well, I think,
19 with the Air District, literally partnering with
20 them, we have the same approach. The County has a
21 very skilled group in their hazardous materials
22 group. It's part of our health department.

23 And so when we're undergoing our
24 environmental review and dealing with risk of
25 upset, we bring them on as partners, as well. So

1 for any lead agency you need to tap into those
2 other public agencies that have a skill set that
3 we don't have and bring them on as partners at the
4 very beginning of the process. And that's
5 invaluable and it really speeds the system.

6 The applicants, I should get back to
7 working with their public, some of our industries
8 have sent -- I apologize if I don't know the
9 name -- their community advisory panels that they
10 work with on an ongoing basis so that they have
11 those relationships built into the community.
12 That is very very important, and I think that
13 that's served them very well to do that.

14 In terms of our land use permit process
15 it's the same as you would find that you likely
16 heard from the City of Benecia. It is a very
17 simple three-step process. And it doesn't matter
18 if it's for a retail or a commercial or an
19 industrial, you go through the same very steps.
20 And it's the application being deemed complete.
21 The second step is your CEQA process. And the
22 third step is the public hearing.

23 In terms of best practices, any land use
24 agency that's working on an industrial project
25 should begin their CEQA process immediately. Do

1 those steps concurrently. Steps one and two
2 should always be done concurrently. There's no
3 reason, when you're dealing with a project of a
4 complexity of an industrial project, to wait until
5 you have every bit of information that you think
6 you might.

7 Similarly you should bring on your
8 consultants into a proper selection of your
9 consultants. Our approach has been that the
10 environmental consultants that are out there in
11 the community are either technically really good,
12 or they may be good at CEQA, itself, but generally
13 not both.

14 And so we look for those people that
15 have very high technical competency and we believe
16 we bring the CEQA competency to the table.

17 We're also supported very well by our
18 Office of County Counsel. And as well, we
19 recommend any industry that's coming in, that they
20 have competent counsel, as well, so that we can
21 communicate all around throughout the process.

22 I have seen things that I am
23 disappointed to see, as an employee of a public
24 agency, you know, as a resident I am sorry when I
25 see the public process being abused. And you do

1 see that from time to time. I'm a fervent
2 believer in the Public Records Act system, and the
3 importance of the public having immediate and
4 complete access to public records. But I have
5 seen it abused.

6 We do have circumstances when we have
7 large projects and we see one law firm or another
8 intend, try to, in my opinion, shut down our
9 review system by bulking us up with requests that
10 really we don't believe that they're really
11 interested in.

12 I'll give you just a small example.
13 When we were looking at the Conoco's last
14 application, it was an ultralow sulfur diesel
15 project, there was a typographical error in our
16 draft EIR that referenced an older version of the
17 CEQA guidelines, which are put out by the Office
18 of -- the State Office Planning --

19 PRESIDING MEMBER GEESMAN: Planning and
20 Research.

21 MS. KUTSURIS: That's correct. They
22 were demanding that we find that old document for
23 them. You know, those sort of steps. And, we're
24 prepared in our County, because we've dealt with
25 that before, and because we're a fairly large

1 organization, and we have good support from our
2 County Counsel, and we just bring the resources to
3 bear when that happens, so that the planners that
4 are actually working on the process are not
5 burdened by that. But that's not easy to do if
6 you don't have those resources inhouse.

7 Finally, I would say that if you're a
8 public agency that has these industries inhouse,
9 you need to have employees that truly believe in
10 the importance of these industries, that are
11 interested in learning about these industries, and
12 will work with them as partners.

13 Finally, I guess the last comment that I
14 would have to say is that I would welcome any
15 discussion with any of the industries that are
16 located in our County or outside about what could
17 be done. They're not the only ones that come to
18 us and wave their hands and say, we need better
19 service. And that's what we do day-in and day-
20 out. And we welcome those sort of discussions.

21 PRESIDING MEMBER GEESMAN: Let me ask
22 you a couple of questions. The first is on the
23 area of staff specialization. Do you have
24 particular staff in the planning department that
25 are the ones that see all the refinery

1 applications?

2 MS. KUTSURIS: Yes, we are.

3 PRESIDING MEMBER GEESMAN: How large is
4 that staff?

5 MS. KUTSURIS: We have two. And we see
6 about, as I said, 400 to 500 projects every year.
7 So, we always make sure we have one core senior
8 planner that is available to work on those
9 projects, and we're growing our second one, who is
10 an associate level planner right now. And then I
11 see them, as well, just because I started off as
12 an entry level planner. So we have that.

13 We also have that very important
14 expertise from our health department.

15 PRESIDING MEMBER GEESMAN: I was going
16 to ask about that. And that's somebody that looks
17 at the refinery -- every refinery project that
18 comes in?

19 MS. KUTSURIS: Yes, absolutely. There's
20 a group, and I apologize, I don't know the
21 numbers, there's a hazardous materials division
22 that's part of our health department. And they
23 are the ones that review the risk management and
24 prevention programs.

25 As I understand it, they're generally

1 chemical engineers and many have come from
2 industry. We use them as partners whenever we
3 have one of those applications.

4 Any application that comes in our door
5 actually goes to the health department, as well.
6 And they help us determine whether or not
7 discretionary permits are required.

8 PRESIDING MEMBER GEESMAN: And the
9 Counsel's Office --

10 MS. KUTSURIS: The Office of County
11 Counsel?

12 PRESIDING MEMBER GEESMAN: Yeah,
13 probably more turnover there I would guess, but --

14 MS. KUTSURIS: No, actually I'm working
15 with the same individual I started with in 1987.
16 The County is a fairly stable organization. And I
17 should mention also back beginning -- prior to
18 1986, and this may be no different from other,
19 what you may find around the state, industrial
20 development did not require any local land use
21 authority.

22 So this is, in the scheme of time, most
23 zoning, most planning departments came into being
24 generally in the 1940s. This is a fairly new area
25 for us to get the expertise. You can't get this

1 in college. You know, you really have to grow
2 this in your local organization, find the folks
3 that are interested in this.

4 One of the other things that we're lucky
5 in our County was back in 1984 we had a group
6 formed by the board of supervisors called the
7 hazardous materials council or task force. Task
8 force?

9 UNIDENTIFIED SPEAKER: -- Commission.

10 MS. KUTSURIS: I know the Commission,
11 but it was originally the hazardous materials task
12 force in 1984. And they are a combination of
13 industry, business, labor, environmental
14 organizations, and public members. And I hope I
15 haven't lost any.

16 Beginning in 1986 they became known as
17 the Hazardous Materials Commission. And when I
18 first started working with Contra Costa County I
19 would attend those meetings. They are the group
20 that has overseen the structure of land use
21 regulation for industry in our County, the
22 unincorporated area.

23 And they devised, over a period of
24 years, with industry's input, a land use system
25 that would give industry choice. To the extent

1 they keep having buffer lands around, that they
2 own, around their refinery; to the extent that
3 they have a distance between themselves and
4 residential uses; to the extent that they use
5 transportation which would be driven by pipeline
6 versus trucks; they have less of a chance of
7 requiring a discretionary land use permit.

8 So there are choices that are built into
9 the regulatory system; whereas, I understand with
10 Benecia, I think they use a flat amount.

11 And so we have had the experience of
12 industries coming to us, needing a land use
13 permit, and then adjusting their project and not
14 needing that permit.

15 PRESIDING MEMBER GEESMAN: Any of your
16 refinery-related projects or decisions ever been
17 successfully challenged in court?

18 MS. KUTSURIS: Never successfully
19 challenged in court. I think Contra Costa County,
20 probably because we're a large organization,
21 sometimes we can be a focal point. And we are
22 extremely successful, in my opinion, in completing
23 environmental impact reports that have withstand
24 challenges in all cases.

25 PRESIDING MEMBER GEESMAN: Is there

1 anything that state government could do in this
2 area of refinery permitting that would help you
3 make your job easier?

4 MS. KUTSURIS: I think that we could use
5 training and understanding. We need to know
6 what -- I came in probably three-quarters of the
7 way through the previous speaker's comments. I
8 understand what is necessary for housing
9 development. And I understand what is necessary
10 for school development and school numbers.

11 What I know from permitting is once an
12 applicant walks in our door, if we understood what
13 is necessary from industry's perspective over the
14 next 10, 15, 20 years, that would help us have the
15 right framework and be able to set things in place
16 for the long term.

17 PRESIDING MEMBER GEESMAN: Thank you
18 very much.

19 MS. KUTSURIS: Thank you.

20 COMMISSIONER BOYD: I want to thank you,
21 also, for your very insightful presentation. As
22 you've noticed from the short period of time you
23 were here, or even in the discussion and
24 questions, everybody tends to fairly rapidly focus
25 on refineries.

1 But our charge and our effort is to look
2 at all infrastructure, which is storage
3 facilities, marine terminals, pipelines. You did
4 mention pipelines. And I just wanted to ask you
5 that all that you said with regard to the
6 processes, procedures, expertise, relationships
7 that you've developed over the years, which was
8 really focused kind of on refineries, is it
9 equally applicable to the entire spectrum of the
10 infrastructure? Are there any gaps in any of
11 these other parts of the infrastructure?

12 Because it's almost the storage
13 facilities, marine terminals and now pipelines
14 that are becoming more of an issue for us.

15 MS. KUTSURIS: Many pipelines -- the
16 pipeline has the -- those that are proposing them
17 have the greatest probability of not requiring
18 local land use permitting. Our County code
19 actually exempts pipelines except for if they're
20 located within a certain distance of residences,
21 or in our general plan what is designed to be --
22 what is expected to be residential growth.

23 So depending upon how they site it and
24 where they purchase their easements, they may not
25 need local land use permitting.

1 COMMISSIONER BOYD: Thank you.

2 PRESIDING MEMBER GEESMAN: Again, thank
3 you very much for your contribution to us today.

4 MS. KUTSURIS: And thank you for
5 accepting my informal comments today; I really
6 appreciate it.

7 PRESIDING MEMBER GEESMAN: Not a problem
8 at all.

9 DR. TOOKER: Commissioner Geesman, could
10 I just ask one question for consistency.
11 Katherine, could you say a little bit about to
12 what degree the County has developed programs
13 related to environmental justice in dealing with
14 community issues?

15 MS. KUTSURIS: Certainly. As I said,
16 Contra Costa County provides planning services to
17 19 unincorporated communities, and they have a
18 wide span of unincorporated communities, from the
19 very wealthy to those that struggle the most and
20 are really on the edge and need assistance.

21 Over the past couple of years most of
22 the departments in the County, all the ones that
23 were believed to have a relevant issue, joined
24 together to review our services and our programs
25 for the purposes of environmental justice to

1 determine whether or not we were fairly providing
2 services to the public.

3 And we looked at, in addition to income
4 and race, in addition we focused also on language
5 and education. We found that when we added the
6 language and the education there were some of our
7 communities that popped up on the radar screen
8 that we otherwise would not have noticed.

9 We do have some communities where
10 there's a significant population of eighth grade
11 education. And that's hard to imagine, but we
12 really have it. That's what we see on the ground.

13 As a result of that we went with a
14 number of recommendations to the board of
15 supervisors, and our initial goal for our
16 department was to insure that when a large project
17 is being proposed that we have the means to
18 communicate with the public. And in a way that
19 they will understand just as well as those people
20 that might be able to avail themselves of
21 attorneys, they, themselves, also understand how
22 to become involved.

23 And so we are adjusting some of our
24 public hearing notices. We will be sending them
25 out in multiple languages when necessary. And so

1 those changes.

2 In terms of, we have not altered our
3 land use designations. Many of the areas, you
4 know, that are industrial in our County, and this
5 would be no surprise, have been historically
6 industrial, industrial back to the late 1800s,
7 late 19, you know, the turn of the century. And
8 there is no proposal to change those at this
9 point.

10 I would suspect with the completion of
11 the new guidelines from the state regarding
12 looking at environmental justice and land use,
13 that we'll be embarking on that review. But at
14 this point there's no proposal to change
15 industrial land to nonindustrial land.

16 What we have seen, which I must say I
17 would give cautions on, are industries that they
18 want to sell properties which now provide a buffer
19 for them. And we have seen some of those
20 applications. And I think over the long term that
21 concerns us.

22 PRESIDING MEMBER GEESMAN: You've got
23 the federal government selling surplus land that
24 had previously been used for a buffer in the west
25 County, as well.

1 MS. KUTSURIS: Yeah, that's correct.

2 Providing those buffers are very important.

3 PRESIDING MEMBER GEESMAN: Again, thank
4 you very much.

5 MS. KUTSURIS: Thank you for taking me
6 late.

7 PRESIDING MEMBER GEESMAN: That
8 concludes our list of people that have either been
9 on our agenda or turned in a blue card. Is there
10 anyone else that cares to address us before we
11 adjourn?

12 Okay, I thank you for your
13 participation, and we will continue our review of
14 this matter in the months ahead.

15 We'll be adjourned.

16 (Whereupon, at 1:30 p.m., the Committee
17 Workshop was adjourned.)

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CERTIFICATE OF REPORTER

I, CHRISTOPHER LOVERRO, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Committee Workshop; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said workshop, nor in any way interested in outcome of said workshop.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of March, 2005.

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